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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 1063.

THE COUNTY OF JASPER, PLAINTIFF IN ERROR,

vs.

GEORGE WILLIAM BALLOU.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF ILLINOIS.

FILED OCTOBER 22, 1880.

SUPREME COURT OF THE UNITED STATES.

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a UNITED STATES OF AMERICA, ss:

The President of the United States, to the judges of the circuit court of the United States for the southern district of Illinois, greeting:

Because in the record and proceedings, and also in the rendition of the judgment of a plea which is in the said court before you, between George William Ballou and the county of Jasper, a manifest error hath happened, to the great damage of the said the county of Jasper, as by its complaint appears: We being willing that the error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid with all things concerning the same to the Supreme Court of the United States, together with this writ, so that
b you may have the same at Washington on the second Monday of October next, in the said Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein, to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness the Hon. Morrison R. Waite, Chief Justice of the said Supreme Court, at Springfield in said district, this 10th day of September, A. D. one thousand eight hundred and eighty, and of our Independence the one hundred and fifth year.

[SEAL.]

J. A. JONES,
Clerk U. S. Cir. C't South. Dist. Ills.

(Indorsed:) 5905. U. S. Supreme Court. Geo. William Ballou vs. The County of Jasper. Writ of error. Filed Sept. 10, 1880. J. A. Jones, cl'k.

c UNITED STATES OF AMERICA, ss:

To George William Ballou, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be held at Washington on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the southern district of Illinois, wherein the county of Jasper is plaintiff and you are defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness S. H. Treat, district judge of said district and one of the judges of said circuit court, this 10th day of September, A. D. 1880.

S. H. TREAT.

I hereby accept service of the foregoing citation, this 27 day September, A. D. 1880.

D. T. LITTLER,
Att'y for Def't in Error.

(Indorsed:) 5905. U. S. Supreme Court. Geo. William Ballou vs. County of Jasper. Citation.

1 Pleas in the circuit court of the United States of America for the southern district of Illinois, held at the city of Springfield, in said district, before the Hon. Samuel H. Treat, district judge of said dis.

trict, and in the absence of the Hon. Thomas Drummond, judge of the seventh judicial circuit pro tempore, sole judge of said court, on Wednesday, the 21st day of July, at the June term of said court, in the year of our Lord one thousand eight hundred and eighty, and our Independence the one hundred and fifth year.

J. A. JONES, *Clerk.*

GEORGE WILLIAM BALLOU *vs.* COUNTY OF JASPER } Assumpsit.

SOUTHERN DISTRICT OF ILLINOIS, *ss:*

George William Ballou, a citizen and resident of the State of Massachusetts, puts in his place Messrs. Hay, Greene & Littler, his attorneys, against the county of Jasper, a corpor organized and existing under and by virtue of the laws of the State of Illinois, defendant
2 in a plea of trespass on the case upon promises, which put in its place J. H. Halley, esq., its attorney.

SOUTHERN DISTRICT OF ILLINOIS, *ss:*

Be it remembered that heretofore, to wit, on the 11th day of May, in the year of our Lord one thousand eight hundred and eighty, came said plaintiff, by his attorneys, and filed in the office of the clerk of said court his præcipe for summons and bond for costs in said cause, whereupon there issued out of said clerk's office a summons in said cause, directed to the marshal of said district, to execute which said summons, together with the return of the marshal thereon, is in the words and figures following, to wit:

Summons.

Circuit court of the United States of America, southern district of Illinois, ss:

The United States of America to the marshal of the southern district of Illinois, greeting:

3 We command you to summon county of Jasper, if found in your district, to be and appear before our judges of our circuit court of the United States for the southern district of Illinois, on the first day of the next term thereof, to be held at Springfield, in the district aforesaid, on the first Monday of June next, to answer unto George William Ballou of a plea of trespass on the case upon promises, to his damage, as he alleges, of fifteen thousand dollars, and have you then and there this writ.

Witness the Hon. Morrison R. Waite, Chief Justice of the United States of America, at Springfield aforesaid, this eleventh day of May, in the year of our Lord one thousand eight hundred and eighty, and of our Independence the one hundred and fourth year.

[L. S.] J. A. JONES, *Clerk.*

Return of marshal.

I hereby appoint R. B. Moffitt my special deputy to execute this writ. May 22, 1880.

JACOB WHEELER, *U. S. Mar.*

Executed this writ on the 28th day of May, 1880, by delivering a true copy thereof to John J. Rider, chairman of the board of
4 supervisors of Jasper County, Illinois, and also by delivering a true copy thereof to H. K. Powell, county clerk of the county of Jasper.

JACOB WHEELER,
U. S. Mar.
By R. B. MOFFITT,
Special Deputy.

(Endorsed:) Filed June 12th, 1880. J. A. Jones, clerk.

And afterwards, to wit, on the 22d day of May, in the year last aforesaid, came said plaintiff, by his attorneys, and filed in said clerk's office his declaration and copy of account, sued on in said cause, which are in the following words, to wit:

Declaration.

In the circuit court of the United States, southern district of Illinois.
June term, A. D. 1880.

George William Ballou, plaintiff in this suit, a citizen and resident of the State of Massachusetts, by Hay, Greene & Littler, his attorneys, complains of the county of Jasper, a municipal corporation or-
5 ganized and existing under and by virtue of the laws of the State of Illinois, a resident and citizen of said State and of the district aforesaid, and defendant in this suit of a plea of trespass on the case on promises. For that whereas the defendant heretofore, to wit, on the 7th day of May, A. D. 1877, at, to wit, the district aforesaid, made and issued its, to wit, one hundred bonds, partly printed and partly written, bearing date the day and year last aforesaid, and commonly called funded bonds, and which said bonds were payable to bearer, and were by the defendant afterwards, to wit, on the day and year last aforesaid, at, to wit, the district aforesaid, delivered to divers persons for value received, and which said bonds are each for the sum of one thousand dollars, with interest thereon at the rate of seven per cent. per annum, said interest being evidenced by coupons thereto attached, and said bonds are serially numbered from one to one hundred, and are exact copies of each other except as to their serial numbers, and bond number one is in the words and figures following, to wit:

6 UNITED STATES OF AMERICA.

STATE OF ILLINOIS, COUNTY OF JASPER.

No. 1.] FUNDED BOND. [$1,000.00.

For value received, the county of Jasper, in the State of Illinois, promises to pay to bearer one thousand dollars in lawful money of the United States, on the first day of May, A. D. 1897, with interest from date, payable on the first days of May and November in each year, on surrender of the annexed coupons, at the rate of seven per cent. per annum, until the principal sum shall be paid, principal and interest payable at the county treasurer's office, in the town of Newton, in said county. The county of Jasper reserves the right to pay this bond on or at any

and effect thereof, when the defendant should be thereunto afterwards requested.

And whereas also the defendant afterwards, to wit, on the 7th day of May, A. D. 1877, at, to wit, the district aforesaid, made and issued its certain 100 other bonds partly printed and partly written, bearing date the day and year last aforesaid, commonly called funded bonds, and
13 which said bonds were payable to bearer and were by the defendant afterwards, to wit, on the day and year last aforesaid, at, to wit, the district aforesaid, delivered to divers persons for value received, which said *which said* bonds are each for the sum of $1,000.00 with interest thereon at the rate of seven per cent. per annum, which interest is evidenced by coupons thereto attached, and said bonds are serially numbered from one to one hundred, and are exact copies of each other, except as to their serial numbers, a copy of one of said bonds being set out in and made part of the first count of this declaration, and is here made part of this count.

And plaintiff avers that afterwards, and before the maturity thereof, to wit, on the 1st day of March, A. D. 1878, at, to wit, the State of Massachusetts, for value paid, plaintiff became the owner and bearer of seventy coupons, known as coupons number four, taken from a like number of said bonds hereinbefore mentioned, of all of which defendant had due notice.

And plaintiff avers that said seventy coupons, each representing
14 6 months' interest on one of said bonds, became due and payable on the first day of May, 1879; that said coupons are for the sum of $35.00 each, amounting in the aggregate to the sum of $2,450.00, and are numbered from 1 to 60 inclusive, and from 71 to 80 inclusive, being taken from bonds so numbered, and said coupons are exact copies of each other, except that the number of the bond from which each coupon is taken is stamped upon said coupon, and coupon taken from bond number 13 is in the words an fidgures following, to wit:

$35.00.] INTEREST COUPON. [$35.00.

On the first day of May 1*st*, 1879, the county of Jasper, State of Illinois, will pay to the bearer, at the office of the county treasurer, the sum of thirty-five dollars, being six months' interest on bond No. 13.

JOHN BROWN,
Chairman Board of Supervisors.
H. K. POWELL,
County Clerk.

(Across the face, in red :) 4.

By means whereof, and by force of the statute in such case made and provided, the defendant became liable to pay the plaintiff said sums of money in the said coupons mentioned, to wit, the sum of
15 $2,450.00, and being so liable, in consideration thereof the defendant afterwards, to wit, on the day and year last aforesaid, at, to wit, the district aforesaid, undertook and then and there promised to pay the plaintiff the said sum of money in the said coupons mentioned, according to the tenor and effect thereof, when the defendant should be thereunto afterwards requested.

And whereas also the defendant afterwards, to wit, on the 7th day of May, A. D. 1877, at, to wit, the district aforesaid, made and issued its certain 100 other bonds, partly printed and partly written, bearing date the day and year last aforesaid, commonly called funded bonds, and

which said bonds were payable to bearer, and were by the defendant afterwards, to wit, on the day and year last aforesaid, at, to wit, the district aforesaid, delivered to divers persons for value received; which said bonds are each for the sum of $1,000.00, with interest thereon at the rate of seven per cent. per annum, which interest is evidenced by coupons attached thereto, and said bonds are serially numbered
16 from one to one hundred, and are exact copies of each other, except as to their serial numbers, a copy of one of said bonds being set out in the first count of this declaration and made part of said count, and is here made part of this count.

And plaintiff avers that afterwards and before the maturity thereof, to wit, on the 1st day of March, A. D. 1878, at, to wit, the State of Massachusetts, for value paid, plaintiff became the owner and bearer of sixty-nine coupons, known as coupons number five, taken from a like number of said bonds hereinbefore mentioned, of all of which defendant had due notice.

And plaintiff further avers that said sixty-nine coupons, each representing 6 months' interest on one of said bonds, became due and payable on the 1st day of November, A. D. 1879; that said coupons are for the sum of $35.00 each, amounting in the aggregate to the sum of $2,415.00, and are numbered from 1 to 56, inclusive, 58, 59, and 60, and from 71 to 78, inclusive, being taken from bonds so numbered, and said
17 coupons are exact copies of each other, except that the number of the bond from which such coupon is taken is stamped upon said coupon, and coupon taken from bond number three is in the words and figures following, to wit:

$35.00.] INTEREST COUPON. [$35.00.

On the first day of Nov'r 1*st*, 1879, the county of Jasper, State of Illinois, will pay to bearer, at the office of the county treasurer, the sum of thirty-five dollars, being six months' interest on bond No. 3.

JOHN BROWN,
Chairman Board of Supervisors.
H. K. POWELL,
County Clerk.

(Across the face, in red:) 5.

By means whereof, and by force of the statute in such case made and provided, the defendant became liable to pay the plaintiff said sum of money in the said coupons mentioned, to wit, the sum of twenty-
18 four hundred and fifteen dollars ($2,415.00), and being so liable, in consideration thereof the defendant afterwards, to wit, on the day and year last aforesaid, at, to wit, the district aforesaid, undertook and then and there promised to pay the plaintiff the said sum of money in the said coupons mentioned, according to the tenor and effect thereof, when the defendant should be thereunto afterwards requested.

And whereas, also, the defendant afterwards, to wit, on the 7th day of May, A. D. 1877, at, to wit, the district aforesaid, made and issued its certain one hundred (100) other bonds, partly printed and partly written, bearing date the day and year last aforesaid, commonly called funded bonds, and which said bonds are payable to bearer, and were by the defendant afterwards, to wit, on the day and year last aforesaid, at, to wit, the district aforesaid, delivered to divers persons for value re-

ceived, which said bonds are each for the sum of one thousand dollars ($1,000.00), with interest thereon at the rate of seven per cent. per annum, which interest is evidenced by coupons thereto attached,
19 and said bonds are serially numbered from one to one hundred, and are exact copies of each other except as to their serial numbers, a copy of one of said bonds being set out in the first count of this declaration and made part of said count, and is here made part of this count.

And plaintiff avers that afterwards, and before the maturity thereof, to wit, on the first day of March, eighteen hundred and seventy-eight, at, to wit, the State of Massachusetts, for value paid, plaintiff became the owner and bearer of seventy coupons, taken from a like number of said bonds hereinbefore mentioned (and known as coupons number six), of all of which defendant had due notice.

And plaintiff avers that said seventy coupons, each representing 6 months' interest on one of said bonds, became due and payable on the 1st day of May, A. D. 1880; that said coupons are for the sum of $35.00 each, amounting in the aggregate to the sum of $2,450.00, and are numbered from 1 to 60, inclusive, and from 71 to 80, inclusive, being taken from bonds numbered so, and said coupons are exact copies of each other except that the number of the bond from which it is taken is stamped upon each coupon, and one of said coupons taken
20 from bond number five is in the words and figures following, to wit:

$35.00.] INTEREST COUPON. [$35.00.

On the first day of May, 1880, the county of Jasper, State of Illinois, will pay to the bearer, at the office of the county treasurer, the sum of thirty-five dollars, being six months' interest on bond No. 5.

JOHN BROWN,
Chairman Board of Supervisors.
H. K. POWELL,
County Clerk.

(Across the face, in red:) 6.

By means whereof, and by force of the statute in such case made and provided, the defendant became liable to pay the plaintiff said sums of money in the said coupons mentioned, to wit, the sum of $2,450.00; and being so liable, in consideration thereof the defendant afterwards, to wit, on the day and year last aforesaid, at, to wit, the district aforesaid, undertook and then and there promised to pay the plaintiff the said sum of money in the said coupons mentioned, according to the tenor and effect thereof, when the defendant should be thereunto afterwards requested.

21 And whereas the defendant afterwards, to wit, on the 10th day of May, A. D. 1880, at, to wit, the district aforesaid, became indebted to the plaintiff in a certain other large sum of fifteen thousand dollars for money lent and advanced by the plaintiff to the defendant at his request; and in the like sum for money before that time paid and expended by the plaintiff for the use of the defendant at his request; and in the like sum for money before that time received by the defendant for the use of the plaintiff; and in the like sum for interest on divers sums of money before that time forborne by the plaintiff to the defendant at his request for divers spaces of time before then elapsed; and being so indebted, the defendant, in consideration thereof, then

and there promised the plaintiff to pay him on request the several sums of money so due him as aforesaid; yet the defendant, though often requested, has not paid the said sums of money, or any or either of them, or any part thereof, to the plaintiff, but refuses so to do, to the damage of the plaintiff of $15,000.00, and therefore he brings his suit.

HAY, GREENE & LITTLER,
Att'ys for Plaintiff.

22 *County of Jasper, to George William Ballou,* Dr.

For money lent and advanced		$1,500 00
" " paid and expended		15,000 00
" " had and received		15,000 00
" interest on money forborne		15,000 00

(Endorsed): Filed May 22, 1880. J. A. Jones, clerk.

And afterwards, to wit, on the 8th day of June, in the year of our Lord aforesaid, came said defendant and filed in said clerk's office its pleas in said cause, which are in the words and figures following to wit:

Pleas.

JASPER COUNTY
ats.
GEORGE WILLIAM BALLOU. } Assumpsit.

And the said Jasper County, by John H. Halley, attorney, comes and defends the wrong and injury, and says that it did not undertake or promise, in manner or form, as the said George William Ballou hath complained against it, and of this the said Jasper County puts itself upon the country.

23 And for further plea in this behalf defendant says, actio non, because it says that the alleged causes of action of plaintiff are as set out in the special counts of plaintiff's declaration, and no other, and defendant says that on the 18th day of January, A. D. 1868, the board of supervisors of Jasper County, by orders entered of record directed the holding of the legal voters in the several townships in said county, at the usual place of holding elections in said townships on the 7th day of April, 1868, for the purpose of issuing bonds to be subscribed as stock to the Grayville and Mattoon Railroad Company, to the amount of one hundred thousand dollars, bearing interest at the rate of ten per cent. per annum from the date of issue, one-sixth payable annually, and, afterwards, on the 7th day of April, 1868, in pursuance of such order of the board of supervisors of said county of Jasper an election was held at which there was a vote taken upon the question of issuing one hundred thousand dollars to the Grayville and Mattoon Railroad Company as a subscription to the stock of said company, and a majority of

24 said voters were returned as having voted for such subscription. And, that, on the authority of said election, and no other, the said board of supervisors afterwards issued and delivered one hundred thousand dollars of the bonds of said county, numbers, dates, and amounts as follows: Numbers 1 to 16 inclusive, each for one hundred thousand dollars, dated Oct. 19th, 1876. Due October 1st, 1877, with interest at the rate of ten per cent. per annum. Numbers 16 to 26, inclusive, for like amount & interest, due October 1st, 1868. Numbers 27

to 32, inclusive, of like bonds, dated Nov. 11th, 1876, due November 1st, 1878. Numbers 33 to 48, inclusive, of like bonds, due November 1st, 1879. Numbers 49 to 50, inclusive, of like amount, due November 1st, 1880. Numbers 51 to 55, inclusive, dated Dec. 30th, 1876, due January 1st, 1881, of like amounts. Numbers 56 to 64, of like date and amount, due January 1st, 1881. Numbers 65 to 75, of like bonds inclusive, dated February 24, 1877, due February 1st, 1883, and the following is a copy of one of said bonds except dates, and numbers, and signatures.

25 UNITED STATES OF AMERICA.

STATE OF ILLINOIS, COUNTY OF JASPER.

No. .] GRAYVILLE AND MATTOON RAILROAD BOND. [$1,000.

Know all men by these presents, that the county of Jasper, State of Illinois, acknowledges itself to be indebted in the sum of one thousand dollars, lawful money of the United States of America, which sum of money the said county promises to pay to the Grayville and Mattoon Railroad Company or bearer, at the office of the county treasurer of said county, on the first day of in the year of our Lord on' thousand eight hundred and , with interest at the rate of ten per centum per annum, which interest shall be payable on the first day of of each year at the office of the treasurer of said county on the presentation and delivery of the coupons severally hereto annexed until payment of the principal sum.

This bond is issued under and by virtue of a law of the State
26 of Illinois, entitled "An act to incorporate the Grayville and Mattoon Railroad Company," passed February 6th, 1857, with amendatory acts thereto in force March 1st, 1867, and March 27th, A. D. 1869, in compliance with a vote of the electors of said county at an election held April 7th, 1868, in accordance with said acts.

This bond is one of a series limited to one hundred thousand dollars, one-sixth of the amount made payable annually at ten per cent. per annum, issued for stock in the Grayville and Mattoon Railroad Company by the county of Jasper, and placed in trust for delivery only by the trustee herein named to wit: of the county of Jasper, which shall not become obligatory unless the certificate endorsed hereon signed by said trustee—the faith of the said county of Jasper is hereby pledged for the payment of the principal sum and interest aforesaid.

In testimony whereof the county of Jasper by its chairman of the board of supervisors of said county, and the clerk of the county
27 court by ex-officio clerk of said board of supervisors, by order of said board here subscribed this bond this day of A. D. 187

County Clerk.

Chairman of the Board of Supervisors.

I hereby certify that this bond is one of a series of bonds held by me as trustee of the county of Jasper, to be declared to the Grayville and Mattoon Railroad Company as per order of the board as stated therein.

Trustee.

That the following is a copy of the act of 1857, referred *referred* to in said bond after the title and inacting words:

SEC. 1. That the Grayville and Mattoon Railroad Company shall have power and right to extend the railroad by the act of their incorporation from Olney to any point on the Wabash or Ohio River, and from Mattoon to Decatur or to any other place or point, or place north of
28 Mattoon, and the board of directors of said company are authorized to change the name of said company so that the same may be made to correspond with the alternate location of the said road, and shall have the same rights and powers, subject to same restrictions and conditions with respect to every part of said road as the same may be extended as aforesaid.

SEC. 2. Cities, towns, and counties shall be authorized to subscribe for stock in said company, in like manner and with like effect as is provided in and by the act entitled "An act to provide a general system of railroad incorporations," approved Nov. 5th, 1849, and the several acts amendatory thereof; provided that the county court of any county may, having first submitted the question of subscription to the vote of the people of the county, subscribe for stock in said company, payable in lands or town or city lots to be taken upon such terms and conditions, and be conveyed in such manner as the said court and the said
29 company may agree upon, and that said subscription shall not exceed two hundred thousand dollars, and the said subscription may be made partly in money and partly in lands, as the said court and the said company may agree.

SEC. 3. Any county court subscribing for stock in the said company shall be authorized to issue bonds in payment for the same in the name of the county, of such denominations as the said county may think fit, not *acceeding* in the aggregate of the said bonds the sum of two hundred thousand dollars, drawing interest at the rate of ten per cent. per annum, payable semi annually; the making and this issuing of said bonds to correspond in all other respects of the said act, approved November 5, 1849, and the several acts amendatory thereof.

SEC. 4. The clerk of the county, of the proper county, shall from year to year, as long as may be necessary, and to the assessment
30 of taxes upon all taxable property and rights in the county an of assessment to pay the interest accruing upon the bonds so issued by the county court, and the collector of the county shall collect the same in money at the same time that he shall collect the other revenues; and shall, with all reasonable despatch, pay the same over to the county treasurer, taking a receipt for the same. And the county treasurer shall pay over to the authorized holders of the said bonds, as specified therein, seven-tenths of the ten per cent. interest collected for said bonds, and return the remaining three-tenths of the said ten per cent. interest as a sinking fund, which shall be applied by him from time to time in good faith, to extinguish and redeem the principal of said bonds; provided that the said seven-tenths interest accruing in the said bonds should be paid to the authorized holders thereof in the city of New York.

SEC. 5. This act to take effect and be in force from and after its passage.

Approved March 1, 1867.

31 That the bonds and the coupons attached, declared on by the plaintiff in the several special counts of his declaration, are a part

of the coupons of the funded bonds for one hundred thousand dollars, and coupons of the bonds of one hundred in number, and each for $1,000, hereinbefore described. That the said board of supervisors had no power to issue the said original bonds, and the same being issued without authority of law, are absolutely void. Wherefore the county of Jasper prays judgment if the said George William Ballou ought to have or maintain his action against him.

And further plea in this behalf defendant says actio non. For that, whereas said county of Jasper having issued one thousand thousand-dollar bonds of said county on the 13th day of March, 1877, the board of supervisors of said county by resolution ordered an election to be held on the 3rd day of April, 1877, for the purpose of funding the one hundred thousand-dollar bonds issued by said county, as set
32 forth in the precediary plea of defendant herein that an election was held as ordered, and a majority of the voters of said county were found by the board of supervisors to have voted for funding said bonds; that on the 3rd day of May, 1877, the said board of supervisors, by its chairman and clerk, issued one hundred bonds each in the sum of one thousand dollars, drawing seven per cent., payable semi-annually, which interest was shown by coupons attached upon a part of which coupons this suit is brought. That the said funded bond was issued by the board of supervisors, claiming authority so to do by an act of the legislature of the State of Illinois, in force April 14, 1875, authorizing counties, cities, school districts, and other municipal corporations to take up and cancel outstanding bonds and other evidences of indebtedness and fund thesame, in which act is found the following provision: Provided, that such bonds or other evidences of indebtedness shall not be issued so as to increase the aggregate indebtedness of such
33 municipal corporations beyond five per centum on the value of the taxable property therein to be ascertained by the last assessment for State and county taxes.

That the said issue of one hundred thousand dollars largely increased the indebtedness of said county beyond five per centum on the value of the taxable property in said county, as so ascertained that the assessed valuation of the taxable property as ascertained by the last assessment preceeding the issuing of said refunding bonds, the assessment of 1876 was $1,953,593, and that the said county of Jasper was indebted at that time the sum of $34,165 for building a court-house for said county, and the said county was also indebted in a large sum, to wit, the sum of $10,000, for the current expenses of said county, wherefore it says that the said board of supervisors had no authority in law to issue the said funding bonds, wherefore he prays judgment if said plaintiff ought to further maintain his action against him.

32 And further plea in this behalf defendant says actio non; for that whereas the board of supervisors of said county, on the 24th day of February, 1877, issued and delivered the bonds of said county to the Grayville and Mattoon Railroad Company in payment of that amount of stock taken by said county in said corporation; that the said county adopted township organization in the year A. D. 1860, and that the said bonds purported to be issued by act of the general assembly and in force March 1st, 1867, entitled an act to amend an act to incorporate the Grayville and Mattoon Railroad Company, approved February 6, 185[illegible]; a part of the coupons upon the said bonds, after being funded, are declared on against defendant herein, and that under the said act of the general assembly the said county had no power to issue the said bonds, where-

fore he prays judgment of the plaintiff; shall further mention his action against it as declared against in the special counts of plaintiff's declaration against it.

JOHN H. HALLEY,
Attorney for Defendant.

(Endorsed:) Filed June 8, 1880.—J. A. Jones, clerk.

And afterwards, to wit, on the 21st day of June, in the year aforesaid, came said plaintiff by his attorneys and filed in said clerk's office his demurrer in said cause, which is in the following words, to wit:

35 *Demurrer.*

Circuit court of the United States, southern district of Illinois, June term A. D. 1880.

GEORGE WILLIAM BALLOU
vs.
COUNTY OF JASPER.

And said plaintiff, by Hay, Greene, and Littler, his attorneys, says that the said special pleas are not sufficient in law.

HAY, GREENE & LITTLER,
Attorneys for plaintiff.

(Endorsed:) Filed June 21, 1880.—J. A. Jones, cl'k.

And afterwards, to wit, on Thursday, the 1st day of July, A. D. 1880, at the June term of said court, in the year last aforesaid, the following proceeding were had in said court and entered of record in said cause, to wit:

GEORGE WILLIAM BALLOU
vs.
COUNTY OF JASPER. } Assumpsit.

By consent of parties by their attorneys, this cause is set for hearing on the 5th day of July, inst.

And afterwards, to wit, on the 5th day of July, in the year aforesaid, came said defendant, by its attorney, and filed in said clerk's office his additional pleas in said cause, which are in the following words, to wit:

36 *Additional pleas.*

In the United States circuit court, southern district of Illinois.

GEO. WILLIAM BALLOU
vs.
THE COUNTY OF JASPER.

And for a further plea in this behalf, defendant says actio non, because it says that the several causes of action in the declaration of said plaintiff are one and identical with and grow out of the said supposed

causes of action mentioned in the first, second, third, fourth and fifth counts of said declaration, and not otherwise.

And defendant avers that on the 18th day of February, 1868, the board of supervisors of Jasper County, by an order entered of record, directed the holding of an election by the legal voters of said county, in the several townships thereof, on the 7th day of April, 1868, for the purpose of voting for or against the issuing of bonds to be subscribed as stock to the Grayville and Mattoon Railroad Company to the amount of one hundred thousand dollars, bearing interest at the rate of ten per cent. per annum from the date of issue; one-sixth pay-
37 able annually from the date of issue.

That afterwards, on the 7th day of April, 1868, in pursuance of such order of the board of supervisors of said county, and under no other authority whatever, an election was held at which there was a vote taken upon the question of issuing one hundred thousand dollars in the bonds of said county in payment of a subscription to the stock of said company, and a majority of said voters were returned as having voted for such subscription. And that upon the authority of said election, and none other, the said board of supervisors afterwards issued one hundred thousand dollars of the bonds of said county of numbers, dates, and amounts as follows, to wit:

Numbers 1 to 16 inclusive, each $1,000, dated Oct. 19, 1876. Due Oct. 1st, 1877, interest ten per cent. per annum.

Numbers 16 to 26 inclusive, of like amount, date, and interest, and due Oct. 1st, 1878.

Numbers 27 to 32 inclusive, of like amount and interest. Date Nov. 11, 1876, and due Nov. 1st, 1878.

38 Numbers 33 to 48 inclusive, of like amount, date, and interest, and due Nov. 1, 1879.

Numbers 49 to 50 inclusive, of like amount, date, and interest, and due Nov. 1, 1880.

Numbers 51 to 55 inclusive, of like amount and interest. Date Dec. 30, 1876, and due Jan'y 1, 1881.

Numbers 56 to 64 inclusive, of like amount, date, and interest, and due Jan'y 1st, 1881.

Numbers 65 to 75 inclusive, of like amount, date, and interest, and due Jan'y 1, 1882.

Numbers 76 to 80 inclusive, of like amount and interest. Date Feb'y 24, 1877, due Feb'y 1, 1882.

Numbers 81 to 100 inclusive, of like amount, date, and interest, and due Feb'y 1, 1883, and the following is a copy of said bonds except the numbers, dates, times when due, and signatures.

UNITED STATES OF AMERICA.

STATE OF ILLINOIS, COUNTY OF JASPER.

GRAYVILLE AND MATTOON RAILROAD BOND.

$1,000.

39 Know all men by these presents, that the county of Jasper, State of Illinois, acknowledges itself to be indebted in the sum of one thousand dollars lawful money of the United States of America, which said sum of money the said county promises to pay to the Grayville and Mattoon Railroad Company or bearer, at the office of the county treas-

urer of said county, on the first day of in the year of our Lord one thousand eight hundred and with interest at the rate of ten per centum per annum, which interest shall be payable on the first day of each year, at the office of the treasurer of said county, on the presentation and delivery of the coupons severally hereto annexed.

This bond is issued under and by virtue of a law of the State of Illinois, entitled an act to incorporate the Grayville and Mattoon Railroad Company, passed February 6, 1857, and amendatory acts thereto in force March 1st, 1867, and March 27, 1869, in compliance with a vote of the electors of said county at an election held April 7, 1868, in accordance with said acts.

This bond is one of a series limited to one hundred thousand
40 dollars, one-sixth of the amount made payable annually, at ten per centum per annum, issued for stock in the Grayville and Mattoon Railroad Company by the county of Jasper, and placed in trust for delivery only by the trustee herein named, to wit, of the county of Jasper, which shall not become obligatory unless the certificate endorsed hereon signed by said trustee.

The faith of the county of Jasper is hereby pledged for the payment of the principal sum and interest aforesaid.

In testimony whereof the county of Jasper by its chairmain of the board of supervisors of said county and the clerk of the county court as ex officio clerk of said board of supervisors have subscribed this bond this day of A. D. 187 .

County Clerk.

Chairman of the Board of Supervisors.

I hereby certify that this bond is one of a series of bonds held by me as trusteee of the county of Jasper, to be delivered to the Grayville and Mattoon Railroad Company as per order of the board as
41 *as* stated therein.

Trustee.

Which said bonds with coupons thereunto attached for the interest were severally signed by the chairman of said board of supervisors and the county clerk of said county as ex-officio clerk of said board under authority of an order of said board of supervisors, and none other, and delivered to the said railroad company.

And defendant avers that the only authority of law or supposed authority of law under which said board of supervisors ordered said election and issued said bonds and subscribed said stock was the 2nd, 3d, and 4th sections of the said amendatory act referred to and recited in said bonds, which is a private law of the State of Illinois and is entitled "An act amendatory to an act entitled an act to incorporate the Grayville and Mattoon Railroad Company, approved February 6, 1857," which said amendatory act was approved March 1, 1867, and the second, third and fourth sections relating to the subscriptions of the stock of said company by counties are in words and figures fol-
42 lowing:

SECTION 2. Cities, towns and counties shall be authorized to subscribe for stock in the said company in like manner and with like effect as provided in and by the act entitled an act to provide a general system of railroad incorporations, approved Nov. 5, 1849, and the sev-

eral acts amendatory thereof. Provided that the county court of any county may, having first submitted the question of the vote of the people of the county, subscribe for stock in said company payable in lands or town or city lots, to be taken upon such terms and conditions and be conveyed in such manner as the said court and the said company may agree upon, and that the said subscription shall not exceed two hundred thousand dollars; and the said subscription may be made partly payable in lands and partly in money as the said court and the said company may agree.

SECTION 3. Any county court subscribing for stock in the said company shall be authorized to issue bonds in payment for the sum
43 in the name of the county of such denominations as the *as the* said county may think fit, not exceeding in the aggregate of such bonds the sum of two hundred thousand dollars, drawing interest at the rate of ten per centum per annum, payable semi-annually; the making and issuing of said bonds to correspond in all other respects with the provisions of the said act approved November 5, 1849, and the several acts amendatory thereof.

SECTION 4. The clerk of the county court of the proper county shall from year to year, as long as may be necessary, add to the assessment of taxes upon all taxable property and rights in the county an increased rate of assessment sufficient to pay the interest accruing on the bonds so issued by the county court; and the collector of the county shall collect the same in money at the same time that he shall collect the other revenues, and with all reasonable dispatch pay the same over to the county treasurer, taking a receipt for the same; and the county treasurer shall pay over to the authorized holders of the said bonds, from time to time as specified therein, seven-tenths of the ten
44 per cent. interest called for by the said bonds, and retain the remaining three-tenths of the said ten per cent. interest as a sinking fund, which shall be applied by him from time to time in good faith to extinguish and redeem the principal of said bonds. Provided that the said seven tenths of the interest accruing on the said bonds shall be paid to the authorized holders thereof in the city of New York.

SECTION 5. This act to take effect and be in force from and after its passage.

And said defendant further avers that at the time the said act became a law on the first day of March, 1867, and took effect, the same county of Jasper was under township organization and had then and there a board of supervisors duly acting, and ever since said time said county has been, and now is, under township organization with a board of supervisors duly acting in county matters, and also a county court duly acting under the laws of Illinois.

And defendant further avers that the said coupons in the said
45 special counts of said declaration mentioned, and the said one hundred thousand dollars in said special counts of said declaration mentioned, are bonds and coupons authority of issued by the said board of supervisors of said county of Jasper for the purpose of funding said bonds so issued to the Grayville and Mattoon Railroad Company as aforesaid, and include said original bonds and no other indebtedness of said county whatever, and said funding bonds were so issued in compliance with the law recited therein.

(*Amendment made by leave of court.*—That the said plaintiffs at the time of the said funding were the holders and in possession of a part or the whole of said original bonds, and the said funding bonds upon which the coupons mentioned in said special counts of said declaration were attached were issued and delivered by defendant to plaintiff in exchange for a like amount of said original bonds so held and possessed at the time by said plaintiff, and for no other indebtedness whatever.)

And so said defendant avers that the said original bonds so is-
46 sued to said railroad company as aforesaid were absolutely void, and that said funding bonds and coupons so issued to take up and cancel such void original bonds are null and void.

And this defendant is ready to verify, wherefore he prays judgment, &c.

JNO. H. HALLY,
Att'y for Defendant.

(Endorsed:) Filed July 5th, A. D. 1880. J. A. Jones, clerk.

And afterwards, to wit, on Wednesday, the 7th day of July, at the June term of said court, in the year of our Lord last aforesaid, the following proceedings were had in said court and entered of record in said cause, to wit:

Demurrer sustained.

GEORGE WM. BALLOU
vs.
COUNTY OF JASPER. } Assumpsit.

This day this cause came on to be heard upon plaintiff's demurrer to defendant's pleas herein, and the court having heard argument of counsel, and being sufficiently advised in the premises, sustains said demurrer with leave to defendant to amend its pleas, and cause set for hearing July 21st.

47 *Opinion of Judge Drummond.—Opinion filed July 7, 1880.*

GEORGE W. BALLOU
vs.
COUNTY OF JASPER.

Counties. Funding debts by issuing new bonds. Invalidity of original bonds.

Under the act authorizing counties to fund their indebtedness by issuing new bonds in place of the old bonds taken up, the fact that there may have been an irregularity in the issue of the original bonds can not be shown against the bonds issued to fund the debt when in the hands of a bona fide holder. (Ed. Chicago Legal News.)

DRUMMOND, J.:

The question in this case arises on the construction to be given to what is called the funding statute of this State, authorizing counties, cities, townships, school districts, and other municipal corporations to take up and cancel outstanding bonds and other evidences of indebted-

ness and fund the same. In connection with the act of March 1st, 1867, which authorized cities, towns, and counties to subscribe for stock
48 to the Grayville and Mattoon Railroad Company, no objection is made to the validity of the bonds which were issued in this case as not having been in accordance with the funding law, but it is claimed that there was a vice in the issue of the original bonds for which the funding bonds were given, and therefore that the funded bonds were void and the county is not liable.

The facts relied upon to show the invalidity of the original bonds are that the law of 1867 required that the bonds should have been issued by the direction and authority of the county court, and they were, in fact, issued under the authority and by the board of supervisors of the county, while the supreme court of this state has decided that what is called the curative act of April 9th, 1869, which sought to remedy some of the defects which it was supposed had occurred in the issue of the bonds, is inoperative and in violation of the constitution, and therefore there was no legal authority upon which the original bonds could vest, and the funded bonds are invalid.

Now, if we concede that the original bonds were not issued in strict conformity with the statute, and that the curative act was inoper-
49 ative, still the bonds issued by another branch of the legal authority of the county of Jasper, the board of supervisors of the county, who had the authority in many cases to act for the county. It is true it is claimed they had not authority in this particular instance to issue the bonds, but that the county court alone had authority; and yet both bodies would act for the county, and would purport to represent the people of the county, and it is not denied but that there was a vote of the people of the county authorizing the issue of the bonds by the board of supervisors. Therefore it may be said, I think, with a great deal of truth, although technically the original bonds were not issued by the proper authority, in one sense, by the county, and which created a debt on the part of the county; and as the money had been advanced to the county it would constitute an equitable claim against the county, notwithstanding the bonds might have been issued by the wrong tribunal. That being the state of the case, the question is, whether it was not competent for the county, under the funding
50 law, to recognize the validity of these bonds, notwithstanding their might have been an irregularity, and notwithstanding they might have been issued, in point of fact, by the board of supervisors instead of the county court.

The funding law declared that the bonds might be issued for any indebtedness which was binding or which constituted a subsisting legal obligation against the county. It is to be observed that this funding law declared that there should be no funding bonds issued except upon a vote of the people, and a vote was accordingly had, and these funded bonds were issued under that vote and by the proper authority. These facts are all alleged in the funded bond, and the question is, whether as against a bona fide holder the county can go behind all this, and defend against this or similar actions, on the ground that there was a vice in the original indebtedness—that is, in the source of the original indebtedness, in that the bonds were issued by the board of supervisors instead of by the county court. We think that it cannot,
51 but that it must be assumed, especially in view of all these recitals in the funded bonds, to the effect that their issue was under this law and that the proper county authorities had determined that it was a binding obligation on the county, for which these bonds were

issued; they were valid, and that there must be an end of these contests and defenses some time or other; and having issued these bonds under these circumstances, the county of Jasper cannot contest their validity now, even admitting that it could do so if the suit were brought on the original bonds.

(Endorsed:) Filed July 7, A. D. 1880. J. A. Jones, clerk.

And afterwards, to wit, on Wednesday, the 21st day of July, in the year of our Lord last aforesaid, the following proceedings were had in said court and were entered of record in said cause, to wit:

Judgment.

GEORGE WILLIAM BALLOU
vs.
COUNTY OF JASPER. } Assumpsit.

This day this cause came on to be heard upon plaintiff's de-
52 murrer to defendant's amended plea herein, and the court having heard the argument of counsel, and being sufficiently advised in the premises, sustains said demurrer.

Whereupon the issue joined by consent is tried by the court, a jury being waived, and the court, having heard the evidence and argument of counsel, finds the issue for the plaintiff, and assesses his damages at the sum of eleven thousand three hundred and sixteen dollars and seventy-nine cents. It is therefore ordered and adjudged by the court that the plaintiff receive of the defendant the said sum of eleven thousand three hundred and sixteen dollars and seventy-nine cents, his damages aforesaid assessed, together with the sum of dollars and cents, his costs and charges by him about his suit in this behalf expended, and that execution issue therefor.

And afterwards, to wit, on Friday, the 10th day of September, in the year of our Lord last aforesaid, the following proceedings were
53 had in said court and entered of record in said cause:

Order allowing writ of error.

GEORGE W. BALLOU
vs.
COUNTY OF JASPER.

And now, on this 10th day of September, 1880, come again the parties by their counsel, and the defendant tenders its bill of exceptions, which is signed and sealed and made a part of the record; and the defendant thereupon prays a writ of error to the Supreme Court of the United States, which is allowed, on its entering into bond to the plaintiff in the penalty of $10,000, conditional as the law directs, and to be approved by the court, which bond is now presented and approved by the court.

Bill of exceptions.

In the circuit court of United States, southern dist. of Illinois. June term, 1880.

GEO. WILLIAM BALLOU
vs.
THE COUNTY OF JASPER.

Bill of exceptions.

Be it remembered that on the trial of the above-entitled cause, the parties thereto by stipulation waived a jury and submitted the
54 cause for trial to the court, which stipulation is in words and figures following:

Stipulation.

U. S. circuit court, southern district of Illinois.

GEORGE W. BALLOU
vs.
THE COUNTY OF JASPER. } Assumpsit.

It is hereby agreed and stipulation that this cause shall be tried by the court without the intervention of a jury.

Dated July 21st, 1880.

HAY, GREENE & LITTLER,
Att'ys for Plaintiff.
WOOD BROS.,
Att'ys for Defendant.
JOHN H. HOLLEY,
H. B. DEANS,
Att'ys for Defendants.

(Endorsed:) Filed July 21st, 1880. J. A. Jones, clerk.

The plaintiff then, to maintain the issue on his part, read in evidence funded bond No. 1, of Jasper County, Illinois, which is correctly copied in the first count of plaintiff's declaration.

55 Said plaintiff next read in evidence twenty-five coupons taken from the funded bonds of said county, each for thirty-five dollars, due May 1st, 1868, which said coupons are numbered 2, and except No. of bond is correctly copied in the first count of plaintiff's declaration.

Said plaintiff next read in evidence seventy coupons taken from the funded bonds of said Jasper County, each for thirty-five dollars, due Nov. 1, 1878, and numbered 3, and except No. of bond are correctly copied in the second count of said declaration.

Said plaintiff next read in evidence seventy coupons taken from the funded bonds of Jasper County, each for thirty-five dollars, and numbered 4, due May 1, 1879, and which except No. of bond is correctly copied in the third count of plaintiff's declaration.

Said plaintiff next read in evidence sixty-nine coupons taken from the funded bonds of said Jasper County, each for thirty-five dollars, due Nov. 1, 1879, numbered 5, and which with exception of No. of bond is correctly copied in the fourth count of plaintiff's declaration.

56 Said plaintiff next read in evidence seventy coupons, each for

thirty-five dollars, numbered 6, due May 1, 1880, and which with exception of date of bond is correctly copied in fifth count of plaintiff's declaration.

Here plaintiff rested his case.

The defendant, to maintain the issue on his part, read in evidence a private act of the general assembly of the State of Illinois, approved March 1, 1867, entitled "An act amendatory of an act entitled 'An act to incorporate the Grayville and Mattoon Railroad Company, approved February 6, 1867,'" which act is correctly copied in defendant's second or first plea, and also in the 4th special or additional plea.

Defendant next read in evidence certified copies of the records of Jasper County, Illinois, relating to the adoption of township organization, the calling of an election to vote bonds as a subscription to the stock of the Grayville and Mattoon Railroad Company, and the issuing and funding of said bonds, which records are in the words and figures following, to wit:

57 STATE OF ILLINOIS,
Jasper County:

December term, A. D. 1859.

County court of Jasper County, sitting for the transaction of judicial county business, began and held at the court-house in the town of Newton, in said county, on Monday, December 5th, A. D. 1859. Present, Hon. William S. Lee, judge, A. Ward & William H. Eidson, associate justice, Thomas C. Melton, sheriff, and E. W. Curtiss, clerk; court opened by proclamation.

The following among the proceedings were had and entered of record in said term:

Now, on this day comes the clerk of this court and presents to the court an abstract of the votes polled at last November election, A. D. 1859, and the court having examined the same and being sufficiently advised that a majority of the legal votes cast at said election were in favor of the adoption of township organization in the county of Jasper, whereupon it is ordered by the court that commissioners be ap-
58 pointed, viz: A. S. Harris, Jonathan B. Denman, and Joseph Schifferstein, whose duty it shall be to divide the said county of Jasper into townships according to the statute in such cases made and provided, and report thereof to the clerk of this court as provided by law.

STATE OF ILLINOIS,
Jasper County, ss:

September term, 1860.

The supervisors of the several towns in the county of Jasper, and State of Illinois, convened at the court-house, in the town of Newton, in said county, on Monday, the 10th day of September, A. D. 1860, for their annual meeting.

Present, from St. Marie, Joseph Picquet; Newton, John Brooks; South Muddy, William Wood; Crooked Creek, Reuben Carr; Willow Hill, J. P. Madden; North Muddy, Thomas Foster; Union, A. M. Eagleton; Gran-

v lle, Stephen Stevens; Smallwood, Daniel T. Hinds; Thomas C. Melton, sheriff, and E. W. Curtiss, clerk.

On motion of Supervisor Reuben Carr, A. M. Eagleton, of Union Township, was unanimously elected chairman of the board.

59 STATE OF ILLINOIS,
Jasper County, ss:

Special February session, A. D. 1868.

The supervisors of the several different towns in the county of Jasper and State of Illinois convened in the court house, in the town of Newton, in said county of Jasper, on Monday, the 17th day of February, A. D. 1868, in pursuance to adjournment. Present, Messrs. Joseph Picquet, Geo. Kibler, Eli Devor, James C. Ireland, Henry Clark, Jesse Kellum, Wm. McElwee, J. O. Wheeler, and George W. Blair, supervisors; Wm. McElwee, chairman; E. W. Curtiss, clerk; John L. Elder, sheriff.

The following, among other proceedings, were had, and entered of record at said term:

On motion of Henry Clark a vote was taken by the board for ordering an election for voting for or against the tax for railroad purposes, the vote being taken by said board as follows:

Yeas, Joseph Picquet, George W. Blair, J. O. Wheeler, Henry Clark, James C. Ireland.

Noes, Eli Devor, Jesse Kellum.

60 It is further ordered that the minutes in this proceeding be spread upon record, which are as follows:

On motion of Henry Clark a vote was taken by the board for ordering an election for voting for or against the tax for railroad purposes, the vote being taken by said board as follows:

Yeas, Joseph Picquet, George W. Blair, J. O. Wheeler, Henry Clark, James C. Ireland.

Noes, Eli Devore, Jesse Kellum.

It is further ordered that the minutes in this proceeding be spread upon record, which are as follows:

On motion of Joseph Picquet, it is ordered by the board that an election shall be held by the legal voters of Jasper County, in the several townships of said county, at their several places of holding general elections in said townships, on Tuesday, the 7th day of April, A. D. 1868, for the purpose of voting for or against issuing bonds to be

61 subscribed as stock to the Grayville and Mattoon Railroad Company, to the amount of one hundred thousand dollars, bearing interest at the rate of ten per cent. per annum from the date of issue. That said bonds be paid as follows: One-sixth part to be paid annually, from the time of issuing the same, and the interest at the rate aforesaid to be paid annually.

It is further ordered that said bonds are not to be issued to said company until said company shall give a good and sufficient bond, payable to the said board of supervisors, in the penal sum of two hundred thousand dollars, condition to be void upon the complete construction and construction of said road.

It is further ordered that said election shall be by ballot, and each ballot shall be marked thus: "For subscription," or "Against subscription."

It is further ordered that the vote, when cast, shall be for or against

said road upon the route crossing the Embarras River, east of Newton, and on the eastern survey to the Richland County line, as surveyed by Engineer Kennedy, and running on the east side of said river, north of the town of Newton.

62 It is further ordered that said bonds shall issue only as the work progresses, upon estimates made to the board of supervisors by said railroad company.

It is further ordered that when the building of road is let out by the said company that the citizens of Jasper County are to have preference in awarding contracts.

Ordered, that the county clerk be instructed to have 2,000 R. R. election tickets, also to have 5 copies of Grayville & Mattoon R. R. order printed and distributed to each township, to be posted as election notices.

STATE OF ILLINOIS,
Jasper County, ss :

Call meeting of the board, Jan. 23d, 1869.

The board of supervisors met for a special meeting, after being duly called together, the following named members being present, to wit: J. Picque, John Dumont, Joseph Cummins, James Brerison, O. H. Wheeler, Z. H. McCubbins, Walter Prent, J. I. Sampon, and J. L. Crews; E. W. Curtiss, clerk, and S. B. Crowley, sheriff.

Meeting opened by proclamation.

63 The following, among other proceedings, were had and entered of record at said term:

On motion of J. Picquet, the following order was adopted, to wit:

At a special meeting of the board of supervisors being held in the town of Newton, in the county of Jasper and State of Illinois, be it ordered by the board, that whereas on the 7th day of April, A. D. 1868, and election was held in accordance with the specifications and directions of an order of the board of supervisors of said county, on the 18th day of February, 1868; whereas as by the election returns, duly canvassed and *and* approved, it appears that a legal majority of the qualified voters of said county have voted in favor of taking one hundred thousand dollars' worth of stock in the Grayville and Mattoon R. R. Company, to be paid in the manner as embraced and prescribed in the propositions and specifications set forth in the order of the board of supervisors at their special meeting of the February term, 1868; therefore it is ordered by the board of supervisors, in consideration of the premises, that the president and directors of the Grayville and

64 Mattoon R. R. Company be notified that so soon as it may legally be done, this board of supervisors are ready to subscribe said stock so voted by the citizens of said county, to be paid in manner and form as set forth in the above-named order and specifications; and the chairman of this board or his legally appointed agent is hereby authorized and directed to subscribe the same.

It is further ordered by this board so soon as said stock is so subscribed that the said stockholders in the said R. R. company shall call an election for the purpose of electing a new board of directors as provided by said R. R. charter, and that said chairman of this board of supervisors or his legally appointed agent is hereby authorized and directed to cast the of Jasper County, Illinois, in said election for directors of said R. R. company, and that we would recommend that the same be

cast for the election of Thomas J. Martin and James E. James, of Jasper County, Illinois, as two directors in said company.

65 The board of supervisors of Jasper County, Illinois, met and convened at the county clerk's office, in the town of Newton, in the county of Jasper and State of Illinois, at 4 o'clock p. m., Tuesday, March 13th, A. D. 1877. Present, James Leamon, chairman; Wm. W. Hays, James L. Crews, John Mason, S. R. Barker, James H. Brinson, Daniel O'Donnell, Colemore Harris, John Brown, R. G. Scott, John W. Selby, sheriff; H. K. Powell, clerk.

Meeting opened by proclamation.

The following, among other proceedings, were had and entered of record:

Mr. Brinson, from the committee appointed to make arrangements for funding the railroad bonds, reports that said bonds cannot be funded without a vote of the people, and offer the following resolution:

Resolved by the board of Jasper County, Illinois, That the clerk of the county court of Jasper County, Illinois, is hereby ordered to give public notice as by statute required to hold an election on the 3d day of April, 1877, for the purpose of voting for or against the funding of the Jasper County railroad bonds issued to the Grayville and

66 Mattoon Railroad Company for the sum of one hundred thousand dollars, drawing 10% interest; said funded bonds to be due in 20 years, and payable at the option of said county after ten years; said bonds to draw interest not to exceed 7% per annum, said interest to be payable semi-annual' at the treasurer's of' in Jasper County, Illinois.

On motion, it is ordered that James H. Brinson, John Mason, and Daniel O'Donnell be appointed to go to Almy to confer with the Southern Construction Company, parties holding Jasper County bonds issued to the G. & M. R. R. Company, and ascertain the lowest interest that the parties will take on bonds issued to fund bonds now in hands of said parties.

STATE OF ILLINOIS,
Jasper County, ss:

Call session April 30th, and May 1st, 1877.

The board of supervisors of Jasper County, Illinois, met and convened pursuant to a call of one-third their numbers at the office of the

67 county clerk of said county, on Monday, the 30th day of April, A. D. 1877. Present, John Brown, chairman; James C. Ireland, John M. Melton, James L. Crews, William C. Gillson, George Abert, Calmore Harris, Daniel O'Donnell, C. F. Morey, and Samuel R. Barker; H. K. Powell, clerk; John W. Selby, sheriff.

Meeting opened by proclamation by sheniff.

The following, among other proceedings, were had and entered of record at said term:

Now comes Calmore Harris, S. R. Barker, and John Brown, committee appointed to approve a form of funding bond, and report as follows:

APRIL 30TH, 1877.

To the honorable board of supervisors of Jasper County:

We, your committee, would respectfully submit the following report

We examined the co. bond presented by Mr. Cherrie, and found it all right, and subject to your approval.

JOHN BROWN,
Chairman of said committee.

68 *Form of funding bond.*

For value received, the county of Jasper, in the State of Illinois, promises to pay bearer one thousand dollars on the first day of May, A. D. 1897, with interest from date, payable on the first days of May and November in each year (on surrender of the annexed coupons), at the rate of seven per cent. per annum, until the principal sum shall be paid.

Principal and interest payable at the county treasurer's office, in the town of Newton, in said county. The county of Jasper reserve the right to pay this bond on or at any time after May 1st, 1887, upon giving at said place of payment, and also by an advertizement in some New York City daily newspaper at least six (6) months' notice of such intention, and interest shall cease from the day on which this bond is by such notice made payable.

This bond is one of a series of bonds numbered from 1 to 100, inclusive, amounting in all to one hundred thousand dollars, issued by said county of Jasper, for the purpose of funding legally incurred in-
69 debtedness of the county and under and in accordance with an act of the general assembly of the State of Illinois, approved April 14th, 1875, entitled "An act to amend an act entitled 'An act to enable counties, cities, townships, school districts, and other municipal corporations to take up and cancel outstanding bonds and other evidences of indebtedness, and fund the same,'" approved and in force March 26th, 1872, all provisions of which act have been duly complied with.

In testimony whereof, we, the undersigned, officers of Jasper County, being duly authorized to execute this obligation on its behalf, have hereunto set our signatures and affixed the county seal this day of May, A. D. 1877.

[SEAL.]

County Clerk.

Chairman.

Which form is adopted by the board.

On motion, it is ordered that the chairman of this board, and clerk, issue and sign funding bonds when the committee are satisfied
70 that said funding bonds are in proper form, and deliver the same to the county treasurer or the persons presenting G. and M. R. R. bonds, for which the said funding bonds are issued.

STATE OF ILLINOIS,
Jasper County, ss:

I, H. K. Powell, clerk the county court, in and for the county of Jasper, in the State of Illinois, do hereby certify that the foregoing is a true copy of the records remaining in my office.

In witness whereof, I have hereunto set my hand and the seal of said court, this 28th day of June, A. D. 1880.

[SEAL.]

H. K. POWELL,
County Clerk.

Defendant next produced as a witness H. K. Powell, who, being duly sworn and examined as a witness in said cause, testified as follows, to wit:

H. K. POWELL, sworn.

Direct by Mr. WOOD:

Q. I will ask you if you hold any office in Jasper County; and, if so, what is it?

71 A. County clerk.

Q. I will ask you how long you have been county clerk—either county clerk or deputy?

A. Been county clerk a little over six years.

Q. If you were deputy before, state how long.

A. About three years before I was elected—about nine years now, I think.

Q. How long have you resided in Jasper County?

A. Thirty-one years.

Q. How long has Jasper County been under township organization?

A. Since 1860.

Q. I will ask you if it has been under county organization any time since 1860?

A. No, sir.

Q. I will ask you, Mr. Powell, if you know of the issue of the original bonds to the Grayville and Mattoon Railroad?

A. I do.

Q. Please look at that (showing to witness copy of bond set out in defendant's 2d and additional plea) and tell the court.

A. This is of the form of the bonds issued.

Mr. LITTLER. This evidence is all subject to objection.

Q. What was the amount of those bonds? I believe the record shows——

72 The COURT. Two hundred thousand?

Mr. LITTLER. No; one hundred thousand.

A. One hundred thousand.

Q. How are they numbered on the original bonds?

A. From one to one hundred, inclusive.

Q. I will ask you this bond (exhibiting bond, copy of which is set out in plaintiff's declaration) if you issued that or signed that?

A. Yes, sir; I did.

Q. I will ask you if those one hundred original bonds, of which this (showing bond set out in defendant's plea) is a form, were issued for any other purpose except for stock in the Grayville & Mattoon Railroad?

A. They were not.

Q. Look at those coupons (exhibiting), those offered in evidence.

A. I suppose these are the ones you were counting.

Q. I will ask you if those coupons were attached to the original bonds—to the funded bonds?

A. These, I suppose, are the coupons attached to the funded bonds.

Q. Look and see.

A. I would say they were.

The COURT. Cut off and presented in this shape.

73 Q. Your signature is to each one of them?

A. Yes, sir.

Defendant next produced as a witness S. JOHNSON. Sworn.

Direct by Mr. WOOD:

Q. What is your business?

A. I am cashier of the People's Bank.

Q. Whereabouts?

A. Newton, Jasper County, Illinois.

Q. I will ask you if you had any correspondence with the plaintiff, George William Ballou, with regard to these funded bonds before the bonds were issued?

A. Yes, sir.

Q. I believe the evidence shows the vote was taken on the third day of May, 1877; have you had correspondence with these parties or have you collected any of the coupons or anything on these funded bonds since?

A. I think I have.

Q. Did you receive that letter? (Exhibiting letter marked Exhibit A.)

A. Yes, sir.

The COURT. Who is it from, the plaintiff?

74 Q. Yes, sir; the plaintiff. (Letter marked Exhibit A.) I will ask you if you know to what that refers; whether or not to the bonds of Jasper County?

A. I will have to read it first. (After looking over the letter.) What was the question?

Q. If you know what the body of the letter refers to.

A. I think I had written . There was a question whether the county would fund them or not, and they had decided to do it; had had an election and decided to fund the bonds, and this was in answer to the letter I had written to them to that effect.

Mr. HAY. No notice to produce any letter. We object to their testifying as to the contents of any letter they sent to Mr. Ballou.

Q. I am simply asking if he knows what it had reference to, and he says it had reference to the funding of the bonds. I am perfectly willing all that part should be excluded.

Mr. HAY. We object to the introduction of that letter; that is in reply to a letter to Mr. Ballou; and we have had no notice to pro-
75 duce any letter to which that is a reply, and we object to any verbal statement of its contents.

The COURT. I suppose this is the letter of the plaintiff?

Mr. LITTLER. Not the kind of signature that our client signs to letters now.

The COURT. Perhaps you ought to prove that is the signature of the plaintiff.

Q. How many letters have you had?

A. I suppose forty or fifty.

Q. Did you receive that in the course of business—due course of mail?

A. Yes, sir.

The COURT. Well, I will allow it to go into the record. Don't know whether it proves anything or not.

A. I might explain that some of the letters I have come from New York and some from Boston. Of course all are not written by the same clerk; they have two offices.

Q. Did you do any business in relation to the funded bonds after this with the plaintiff Ballou?

A. Did I?

Q. Yes, sir.

A. Nothing, I believe, unless collecting some of the coupons. I believe I collected a few of the coupons.

76 Q. Of the funded bonds?

A. I think so. I know I collected several bonds for them; don't recollect about them all. I think probably I collected a few coupons.

Cross-examination by Mr. LITTLER:

Q. You spoke something about collecting interest on these new funded bonds. Do you remember how many instalments of interest were paid?

A. No, sir; couldn't tell that.

Q. More than one?

A. I collected coupons for them time and again, but how many three were of them, or on the new bonds, I can't say.

Q. You think some of them were on the new bonds?

A. I think they were.

Redirect by Mr. WOOD:

Q. Do you know whether all the original bonds were funded or not?

A. I don't know.

Mr. POWELL recalled.

Direct by Mr. WOOD:

Q. Do you know whether all the original bonds were funded or not?

A. They were not. Eighty thousand of them only funded.

Q. Twenty thousand still remain?

A. Yes, sir.

77 EXHIBIT A.

BOSTON, *May 2nd*, 1877.

Mr. S. JOHNSON, *Cas.*,
Newton, Ills.:

DEAR SIR: Yours 26th inst. duly rec'd, for which please accept our thanks.

We are glad to hear such good accounts of Jasper County.

Resp'y,

GEO. WM. BALLOU & CO.

How about the court-house bonds?

(To all of which evidence upon the part of defendant plaintiff, by his counsel, at the time *accepted*, but the court heard the evidence subject to the exception.)

And this was all the evidence offered on either side.

And thereupon the court, without specially finding any facts proven, found the issue for the plaintiff, and rendered judgment on such finding in favor of said plaintiff and against said defendant for the sum of eleven thousand one hundred and sixteen & $\frac{12}{100}$ dollars, to which finding of the court and the rendering of said judgment thereon the

78 defendant, by its counsel, at the time excepted. And insomuch as the above matters do not appear of record, the defendant brings here his bill of exceptions, and prays that the same may be

signed and sealed and made a part of the record herein, which is according done.

[SEAL.] S. H. TREAT.

(Endorsed:) September 10th, 1880. J. A. Jones, clerk.

And afterwards, to wit, on the 10th day of September, in the year of our Lord last aforesaid, came the defendant, by its attorney, and filed its bond on writ of error in said cause, which is in the words and figures following, to wit:

Bond on writ of error.

Know all men by these presents that we, The County of Jasper, in the State of Illinois, as principal, and John H. Hally, Alexander Wilson, N. D. Myers, of the county of Jasper, and State of Illinois, as securities, are held and firmly bound unto George William Ballou in the penal sum of ten thousand dollars, for the payment of which well and truly to be made we and each of us bind ourselves, our heirs, executors, and administrators jointly and severally firmly by these pres-
79 ents. In witness the said County of Jasper has caused these presents to be signed by the chairman of its board of supervisors, attested by the county clerk of said county, and said securities have set their seals, and dated at Newton this twenty-sixth day of July, in the year of our Lord one thousand eight hundred and eighty.

The condition of the above obligation is such that whereas the said George William Ballou did, on the twenty-first day of July, in the year of our Lord one thousand eight hundred and eighty, at a term of the circuit court of the United States then being holden within and for the southern district of Illinois, in the city of Springfield, in the State of Illinois, obtain a judgment against the above bounden the county of Jasper, for the sum of eleven thousand three hundred and sixteen dollars and seventy-nine cents, and costs of suit, upon which the said the county of Jasper has prosecuted a writ of error to the Supreme Court of the United States and obtained a supersedeas thereon:

80 Now, if the said the county of Jasper shall duly prosecute said writ of error and shall, moreover, pay the amount of the said judgment, costs, interests, and damages rendered and to be rendered against it, the said the county of Jasper, in case the said judgment shall be affirmed in the said Supreme Court, then the obligation to be null and void; otherwise to remain in full force and virtue.

THE COUNTY OF JASPER,
By JOHN J. KIDER, [SEAL.]
Chairman Board of Supervisors of Jasper County.
JOHN H. HALLY. [SEAL.]
ALEX. WILSON. [SEAL.]
N. D. MYERS. [SEAL]

Attest:
[SEAL.]
H. K. POWELL,
County Clerk,
Per T. B. JONES, *Deputy.*

STATE OF ILLINOIS,
Jasper County, ss:

John H. Hally subscribed and sworn before me this 14th day of September, 1880.

H. K. POWELL,
Co. Clerk.

81 Alexander Wilson, another of said sureties, being duly sworn, says that he is worth, exclusive of debts and exemptions, the sum of $4,000.

ALEX. WILSON.

Subscribed and sworn before me this 14th day of September, 1880.

H. K. POWELL,
Co. Clerk.

N. D. Myers, being duly sworn, on oath says that he is worth in real and personal property, above the exemptions allowed by law, one thousand dollars.

N. D. MYERS.

Subscribed and sworn before me this 17th day of September, A. D. 1880.

H. K. POWELL,
Co. Clerk.

(Endorsed:) Filed September 10th, 1880. J. A. Jones, clerk.

(Also endorsed:) Approved. S. H. Treat.

82 UNITED STATES OF AMERICA,
Southern District of Illinois, ss:

I, John A. Jones, clerk of the circuit court of the United States within and for the southern district of Illinois, do hereby certify that the foregoing is a true and correct copy of all the papers filed and proceedings thereon had in a certain cause wherein George William Ballou is plaintiff and the county of Jasper is defendant, as fully as same appear of file & of record in my office.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at Springfield, in said district, this first day of October, in the year of our Lord one thousand eight hundred and eighty, and of our Independence the one hundred and fifth year.

[SEAL.] J. A. JONES, *Clerk.*

(Indorsement on cover:) No. 1063. The County of Jasper, plaintiff in error, vs. George William Ballou. S. Illinois C. C. U. S. Filed 22d October, 1880.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1880.

THE COUNTY OF JASPER, PLAINTIFF IN ERROR.

VERSUS

GEORGE WILLIAM BALLOU, DEFENDANT IN ERROR.

NO. 1063.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF ILLINOIS.

BRIEF AND ARGUMENT OF PLAINTIFF IN ERROR.

I.

May it please the Court:

This was a suit brought by George William Ballou
4 against The County of Jasper, upon a number of interest coupons attached to certain bonds each of which recited "This bond is "one of a series of bonds numbered from 1 to 100 inclusive, amount-"ing in all to One Hundred Thousand Dollars issued by the county of "Jasper for the purpose of funding legally incurred indebtedness and "outstanding bonds of the county, and under, and in accordance with an "Act of the General Assembly of the State of Illinois, approved April 14, "1875, entitled 'An Act to amend an Act, entitled, "An Act to enable "counties, cities, townships, school districts and other municipal corpor-"ations to take up and cancel outstanding bonds and other evidences of "indebtedness and fund the same,"' approved and in force March 26, "1872, all provisions of which act have been duly complied with."

The county filed the general issue and special pleas setting up
9 substantially that the bonds sued on, were issued for the purpose of funding certain other bonds of like numbers and like amounts issued for the purpose of subscription as stock to the Grayville & Mat-

toon Railroad Co. and for no other indebtedness whatever. That such original bonds recited that they were "issued under and by virtue of a "law of the State of Illinois, entitled 'An Act to incorporate the Grayville "& Mattoon Railroad Company, passed February 6, 1857, with amenda- "tory acts thereto in force March 1, 1867 and March 27, 1869, and in "compliance with a vote of the electors of said county at an election held "April 7, 1868, in accordance with said acts." That the act of March 1, "1867, authorized only the County Court of the county to submit the "question of subscription of stock to the electors of the county. 11 "and the County Court only was authorized to make any subscrip- "tion and issue bonds therefor. That the election at which such "original bonds were voted was ordered by the Board of Supervisors of "said county and the subscription was made and the bonds issued 16 "by the Board. That at the time of the passage of the act of March "1, 1867, and ever since, the county had a Board of Supervisors "duly acting, and was under Township Organization, and also had a "County Court acting, of all of which plaintiff had notice. That the orig- "inal bonds were absolutely void, and the bonds, and coupons sued on "and issued to fund the same are also void. These facts are set up in "the first, third and fourth special or additional plea filed by leave 13 "of court."

To these special pleas a demurrer was sustained, and the questions presented are contained in the opinion of the court below, which held that whatever might be the vice in the original bonds, the funded 18 bonds were valid, in view of the recitals contained therein, the proper county authorities having determined that the indebted- ness secured in the original bonds, was a binding obligation on the county.

The cause was, by stipulation, tried by the court. Evidence was heard of the matters set up in the special pleas, which was offered by the defend- ant in support of the general issue, but subject to exception by the plain- tiff. The court without specially finding any facts proven, found the issue for the plaintiff, and rendered judgment against the county for $11,316.79.

It is believed that the evidence substantially proves every aver- ment made in the fourth special or additional plea filed in said cause, as amended, by leave of the court.

II.

The errors assigned are—

1. In sustaining the demurrer to defendants special pleas.
2. In rendering judgment against the county.

III.

The material part of the funding act of 1872, as amended, and

referred to by recital in the bonds to which the coupons sued on were attached is as follows:

§1. "That in all cases where any county, city, town, township, school "district or other municipal corporation have issued bonds or other evi- "dences of indebtedness for money on account of any subscription to the "capital stock of any railroad company, or on account of or in aid of any "public buildings or other public improvement, or for any other purposes "which are now binding or subsisting legal obligations against any "county, city, town, township, school district, or other municipal corpora- "tions and remain outstanding and which are properly authorized by "law, the proper authorities of any such county, city, town, township, "school district or other municipal corporation may upon the surrender of "any such bonds or other evidences of indebtedness, or any number "thereof issue in place or in lieu thereof to the holders or owners of the "same new bonds, etc. * * * * * * * * "And such new bonds or other evidences of indebtedness so issued shall show on their face that they are issued under this act."

Laws of Illinois, 1875, *p.* 68.

It would seem a very clear proposition that the "proper authori. ties" of the county had no power to fund any bonds or other evidences of indebtedness, unless the same were (now) "binding or subsisting legal obligations" against it, and which were (are) "properly authorized by law." That the bonds whose coupons are in controversy were issued to fund other bonds issued as a subscription to the stock of the Grayville & Mattoon Railroad Company is admitted by the demurrer, and fully
26 proven on the trial. Two questions are then presented:

1. Were the original issue of bonds to the Grayville & Mattoon Railroad Company valid, and the "binding, subsisting legal obligations" of the county, and "properly authorized by law?"

2. If not, is it in the power of the Board of Supervisors of the county, by recitals in its funding bonds, to legalize such indebtedness, or estop the county from denying its legality?

Under the original charter of the Grayville & Mattoon Railroad Company there was no provision in regard to municipal corporations subscribing to its stock or making to it any donations. The power under which the subscription was made is found in the amendatory acts of March 1, 1867 and March 27, 1869. See recitals in original bonds above, and in printed record page 10. The sections bearing upon subscriptions in the act of March 1, 1867, are as follows:

§1 "Cities, towns and counties shall be authorized to subscribe "for stock in said company in like manner and with like effect as is pro-

"vided in and by the act entitled 'An Act to provide a general system of "Railroad incorporations approved November 5, 1849, and the several "acts amendatory thereof; provided that the county court of any county "may having first submitted the question of subscription to the vote of "the people of the county subscribe for stock in said company payable "in lands or town or city lots, to be taken upon such terms and condi "tions and be conveyed in such manner as the said court and the said "company may agree upon, and that said subscription shall not exceed "two hundred thousand dollars, and the said subscription may be made "partly in money and partly in lands as the said court and the said com- "pany may agree.

§3 "Any county court subscribing for stock in the said company "shall be authorized to issue bonds in payment for the same in the name "of the county of such denominations as the said county may see fit, not "exceeding in the aggregate of the said bonds the sum of two hundred "thousand dollars, drawing interest at the rate of ten per cent. per an- "num payable semi-annually, the making and the issuing of the bonds to "correspond in all other respects of the said act approved November 5, "1849, and the several acts amendatory thereof."

§4 "The clerk of the county court of the proper county shall from "year to year as long as may be necessary add to the assessment of "taxes on all taxable property and rights in the county an assessment to "pay the interest accruing upon the bonds as issued by the county court "and the collector of the county shall collect the same in money at the "same time he shall collect the other revenues and shall with all reasona- "ble dispatch pay the sum over to the county treasurer taking a receipt "for the same. And the county treasurer shall pay over to the authorized "holders of said bonds as specified therein seven tenths of the ten per "cent. interest collected for the said bonds and return the remaining "three tenths of the said ten per cent. interest as a sinking fund, which "shall be applied by him from time to time in good faith to extinguish "and redeem the principal of said bonds, provided that the said seven "tenths interest accruing in the said bonds should be paid to the author- "ized holders thereof in the city of New York.

Private Laws of 1867, *Vol.* 2, *p.* 736.

Under the supposed authority of this act the board of supervisors, and not the county court, submitted the question of subscription
22 to the voters of the county on April 7, 1868.

In January 1869 the board of supervisors, and not the county court, without apparently any canvass of the votes of the election, enter-
23 ed an order reciting that the result of election was in favor of

subscription, and in 1876 and 1877 the chairman of the board of super-
15 visors and county clerk as ex-officio clerk of said board issued the original bonds, eighty of which were funded into the bonds to which the coupons sued on were attached.

The act of March 27, 1869, referred to above, and by recital in the original bonds, attempted to legalize the election so called by the board of supervisors, and compel the county to make the subscription under the amendatory act of March 1, 1867. The portion of it bearing upon this subject is as follows:

§3 "That all elections held for the purpose of voting said stock, "and the manner in which said stock was voted are hereby legalized in all "respects and the stock to be subscribed in the manner the same was "voted."

Private Laws of Illinois, Vol. 3. p. 360.

In regard to the first question; it is very evident that neither the power to call an election, nor to subscribe to the stock of the Railroad Company, nor to issue bonds in payment of such subscription, had ever been conferred upon the board of supervisors. On the contrary it had, in effect, been prohibited to that body, by the fact of its being conferred in express terms upon the county court.

Potter's Dwarris on Statutes 221.

As early as 1860 the county of Jasper adopted township organiza-tion, and has so remained ever since. At the time of the passage of the act authorizing this subscription, it had a board of supervisors duly acting; likewise a county court, which facts it is presumed must have been
26 known to the legislature.

Supervisors vs. People 25 *Ills.* 185.

By an unbroken line of decisions, since 1860, the Supreme Court of Illinois has held that where power to call elections, make subscrip-tions or issue bonds, has been conferred upon one body or functionary, no other body or individual could act, simply for want of power; and that bonds issued under such circumstances were void in the hands of an innocent purchaser.

Supervisors of Schuyler Co. vs. The People, 25 *Ill.* 181.
Supervisors of Marshall Co. vs. Cook, 38 *Ill.* 45.
Clark vs. Supervisors of Hancock Co. 27 *Ill.* 305.
Force vs. The town of Batavia, 61 *Ill.* 105.

The construction which prevails in the state courts at the time bonds are issued, upon questions touching their validity enter into and

form a part of the law of these contracts.

Township of Elmwood vs. Marcy 92 *U. S.* 290.

At the time these original bonds were issued, in 1876 there was a settled uniformity in the decisions of the court of the highest resort in the state of Illinos, that all bonds of this class were void; whether in the hands of first parties or of innocent purchasers.

The Supreme Court of Illinois has since decided that similar bonds, issued under like circumstances, and as subscriptions to the same company, were void in the hands of purchasers without notice.

Gaddis vs. Richland Co. 92 *Ill.* 119.

That elections by which subscriptions of this kind were made, and bonds of this character issued, were absolutely null and void, was a fact fully recognized by the General Assembly of Illinois. The amendatory act of March 29, 1869, is evidence of the recognition by the legislature of the decisions of the Supreme Court upon this question. It was merely an attempt by the legislature to compel a subscription by the County to the Railroad Company.

The Supreme Court of Illinois at the time of the passage of this act (The People &c vs. Mayor 51 Ill. 30) and, by an unbroken line of decesions between that time and the issue of the original bonds, had held that the legislature had no power under the constitution to impose upon municipalities such indebtedness.

Harward et. al. vs. St.Clair Drain Co. 51 *Ill.* 130.

Hessler, vs Drain Co. 53 *Ill.* 110

Lovington, vs. Wider, 53 *Ill.* 302

The same court, likewise, by a line of decisions of settled uniformity, long before the original bonds were issued had held that all curative acts of the kind of 1869, were unconstitutional.

Marshall et. al, vs. Silliman, 61 *Ill.* 223.

Wiley et. al. vs. Silliman, 62 *Ill.* 170.

This court before the issue of the original bonds followed the decisions of the Supreme Court of Illinois upon this question.

Township of Elmwood vs. Marcy, 92 *U. S.* 290.

The Supreme Court of Illinois has since held this same act unconstitutional.

Gaddis vs. Richland Co. 92 *Ill.* 119.

It would therefore appear to be conclusive that the original bonds

were absolutely null, and the indebtedness secured thereby, void—not from any irregularity, but because the board of Supervisors had no power to incur the indebtedness, to issue the bonds, to provide for their payment, or in any way recognize their validity. Neither had they power directly or indirecly to treat the illegal subscription to the stock of the Company as creating a binding or legal indebtedness against the County.

2 The second question is: Has the board of Supervisors any power to fund these original bonds, or by so doing could they estop the county from setting up their illegality?

It must be remembered that under the funding law, all bonds must show on their face that they were issued under that act. The purchaser of any funded bond, would be apprised by the recitals in the bond itself.

1 That it was issued under the funding act of 1872 as amended by the act of 1875.

2 That it was issued for the purpose of funding "outstanding bonds."

3 Under the decisions of this court, that the perliminary conditions of *fact* whether *in pais* or of record—such as the calling of the election, the result of the vote and the surrender of the old bonds, had been complied with.

He would be bound to see that there exists legislative authority, not in conflict with the State constitution for the issue of the bonds or commercial securities, and would be bound to notice the contents and recitals contained in the instruments.

Dillon on Municipal Bonds, p. 50

We think it not unfair to say that the purchaser was chargeable with notice of the powers and duties of the officers executing the bonds, and making the recitals, as defined in the constitution, laws and judical decisions of the State.

Therefore, while it may be conceeded that the purchaser might rely upon the recitals in the bonds as to the matters of *fact* above mentioned, he had no right to rely upon the recitals as conclusive upon matters of *law*, nor can he be protected by them.

The legality of the "outstanding bonds" was a question of law, the determination of which involved a decision by the supervisors of the extent of their powers and the proper construction of the constitution and laws of their own state.

One of the provisions of the funding act is: "That such bonds, or "other evidences of indebtedness shall not be issued so as to increase "the aggregate indebtedness of such municipal corporation beyond five "per centum on the value of the taxable property therein, to be ascertain-"ed by the last assessment for state and county taxes prior to the issue "of such bonds." It is alleged in the third plea of defendant that the indebtedness of the county was largely in excess of five per cent-
12 of the taxable property as determined by the prior assessment. By the demurrer it is admitted to be true. The language of the Statute in this respect is substantially the language of section 12, article 9, of the constitution, The indebtedness funded by these bonds were void. The act of funding, if the funded bonds are void, was to create a debt. It certainly can not be pretended that a loose recital of a chairman of a county board, and a county clerk, that bonds are issued in accordance with a statute, which in their judgment has been complied with, and that without reciting facts peculiarly within their knowledge showing compliance can over-ride both the positive language of the statute and the constitution. No act of the legislature could directly or indirectly confer power upon the county to incur indebtedness prohibited by the constitution, whether by the form of funding or otherwise.

Law etc., vs. The People, 87 *Ill.* 392.

As these bonds do not contain any recital that their issue was within the constitutional, or statutory limit, they come under the rule laid down in *Buchanan vs. City of Litchfield*, decided at this term of this court.

As an illustration, take the clause of the constitution of 1870 which provides that "No city, town, township or other municipality "shall ever become subscribers to the capital stock of any railroad or "private corporation &c." It would be conceded that no matter what might be the recitals, a bond issued in payment of a subscription made since 1870, (no authority having been given by an antecedent vote) would be null and void. In the *Town of Coloma vs. Eaves*, 92 *U. S.* 490, this court has held that whether the contingency, (such as an election) conferring power upon the municipality to issue bonds, "has "happened or not is a question of fact, the decision of which is by the "law confided to others," and that decision is final. If it be the law that the municipality is estopped from attacking the vice in the original indebtedness through the funding bonds, then it necessarily follows that, despite the provision of the constitution, any municipality may become a subscriber, to-day, to the capital stock of a railroad company, may issue ~~one~~ its valid bonds for the payment of such subscription, and that, without the vote, or even the knowledge of its people. It would only need its su-

pervisor and town clerk, its chairman and county clerk or its mayor and city clerk to sign bonds which recite that they were "issued for the purpose of funding legally incurred indebtedness, and in accordance" with the funding act, "all provisions of which have been duly complied with." Surely the protection of the constitution is a delusion to municipalities, if by the form of funding a debt, it becomes legalized by estoppel or otherwise.

There is no inherent authority in a municipal corporation to fund its debt into negotiable instruments. The funding must stand on the constitution and the law of the State authorizing it.

Police Jury vs. Britton, 15 *Wal.* 566.

There could be no ratification of bonds or indebtedness that were void, nor can the county be estopped by any thing done in attempts to legalize the void acts of its agents.

Marsh vs. Fulton Co., 10 *Wal.* 676.

Marshall Co. vs. Cook, 38 *Ill.* 58.

We believe in this case that the purchaser of these funded bonds was chargeable with notice of the illegality of the indebtedness for which they were exchanged. We think it clear, that the original indebtedness was void, not from irregularity, but from want of power to create it. And finally we submit that the eveidence preserved in this record, fully establishes the fact that the plaintiff knew the illegality of the originai bonds before they were issued.

Respectfully submitted.

JNO. M. PALMER,

Counsel for Plaintiff in Error.

FILED
JAMES H. McKENNEY, Clerk.

SUPREME COURT

OF THE UNITED STATES.

OCTOBER TERM. A. D. 1880.

THE COUNTY OF JASPER, *Plaintiff in Error,*

vs.

GEORGE WILLIAM BALLOU, *Defendant in Error.*

ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF ILLINOIS.

BRIEF AND ARGUMENT OF HAY, GREENE & LITTLER,

On behalf of the Defendant in Error.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM. A. D. 1880.

THE COUNTY OF JASPER, *Plaintiff in Error,*

vs.

GEORGE WILLIAM BALLOU, *Defendant in Error.*

ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF ILLINOIS.

BRIEF AND ARGUMENT OF HAY, GREENE & LITTLER, ON BEHALF OF THE DEFENDANT IN ERROR.

THE FACTS OF THE CASE.

This suit involves the validity of one hundred thousand dollars *funded bonds* of Jasper County. The record discloses the following facts, viz: "The Grayville & Mattoon Railroad Company was chartered by the Legislature of Illinois by an act approved February 6th, 1857. The charter was amended by two separate acts, one approved March 1,

1867, and the other April 9, 1869. The first amendment is set out in full on page 11 of the Record. The second, third and fourth sections of the act of April 9th, 1869, are as follows, viz:

"SEC. 2. That nothing contained in this act shall be so construed as to effect the condition and manner in which elections were ordered, stock voted to be subscribed to aid in the construction of said railroad."

"SEC. 3. That all elections held for the purpose of voting said stock, and the manner in which said stock was voted, are hereby legalized in all respects, and said stock to be subscribed in the manner the same was voted."

"SEC. 4 *Provided*, that nothing herein contained shall operate so as to change the points or line of location of said railroad in Jasper County, or in any wise to impair the conditions upon which the stock subscriptions of Jasper County was made to said road."

Under the Amendatory Act of February 6th, 1867, an election was held in Jasper County in pursuance of a call made by its Board of Supervisors, April 7th, 1868, and a majority of the legal voters thereof (according to the findings of said Board) voted in favor of subscribing $100,000 to the capital stock of said railroad, and issuing bonds for that sum in payment thereof, bearing 10 per cent. interest. It appears that $80,000 of the bonds, above mentioned, were issued, and that the entire amount of the stock, above mentioned, was subscribed. The bonds thus issued were placed upon the market, and the interest was paid thereon. These bonds remaining outstanding uncontested and unpaid, the Board of Supervisors of Jasper County ordered an election to be held on the 3d day of April, 1877, to de-

termine whether or not the said bonds should be funded into 7 per cent. bonds, in pursuance of the funding law of Illinois. The material portion of which law may be found on page 30 of plaintiff's brief in this case. The election was duly called, held, and the result declared to be in favor of funding the bonds. The Board of Supervisors at its called session, April 30th, 1877, approved the form of *funded bonds*, and ordered their execution by its Chairman and Clerk. (Record 25.)

The defendant in error became the purchaser of a portion of the *funded bonds* so issued. This suit is based upon coupons cut from said bonds. Interest was paid on both issues of bonds. On the facts above recited the Court below found the issues for the defendant in error, and rendered judgment in his favor.

ARGUMENT.

So far as we are advised, this is the first attempt on the part of an Illinois municipality to repudiate its *funded indebtedness*. Assuming for the present that a Court of Justice will allow the county to go behind its bonds thus issued, and show that there was a vice in the old bonds. We shall first discuss the questions arising on the old bonds.

The alleged invalidity of the old bonds is that the Board of *Supervisors*, and not the *County Court* of Jasper County, called the election, canvassed the vote, and issued the bonds, and this is the sole ground of their alleged invalidity. By the terms of the act authorizing the issue of the bonds, it is provided that the County Courts of the several counties should call elections, &c., nothing is said in relation to Boards of Supervisors. In view of the fact that, at least, one other county, through which the road was located,

committed the same error complained of in this case, in the calling of its election and the issue of its bonds. We think it may be instructive to inquire how this mistake was made, if, in fact, it was made. At the time of the passage of the act of 1867, a portion of the counties through which the road was located, were under township organization, and a portion was not. Under our statute the corporate powers of a county *not under township organization* at the time of the passage of the act of 1867, were vested in the County Court, whilst those powers were vested in the Board of Supervisors in counties which had adopted township organization. The language of the statute on this subject is, "The powers of the county as a body politic can only be exercised by the Board of Supervisors therefore, or in pursuance of a resolution by them adopted." Gross Statutes 1868, sec. 4. page 751. By the express terms of this statute all the corporate powers of the county were taken from the County Court and vested in the Board of Supervisors. With this statute in full force, the Board of Supervisors of Jasper County, construing the act of 1867, and this act together held that whilst the act last mentioned used the words, "County Court," it meant "*County Court*," in counties not under township organization, but in counties which had adopted that system, it meant the Board of Supervisors, because by the express terms of the general law, all corporate powers of the counties were vested in said body, and those powers were to be exercised only by the Board of Supervisors, or in pursuance of a resolution by it adopted. The construction placed upon the two statutes is a reasonable one, and we are not prepared to say that it was not the correct one. It is the only theory upon which the general statute and the special act can stand together, for if it be

contended that the "*County Court*," under the act of 1867 was to exercise the corporate power of the county in calling the election and issuing bonds, then it follows that for the purpose of aiding this Railroad Corporation, the Legislature deliberately and in the absence of any necessity, repealed by implication a portion of the Township Organization Law. Whatever view, your Honors may take of this decision of the Board of Supervisors, it seems clear to us that the power was exercised by the proper and only corporate body vested therewith. In other words, the Board of Supervisors in counties under township organization, in this State, is the "*County Court*" of such county, and it is the only court vested with the corporate power of the county.

It must be conceded at the outset, that the old bonds were valid, unless the Amendatory Act of April 9th, 1869 (three sections of which are herein before quoted), is unconstitutional. It is also admitted that our Supreme Court has passed upon this act, holding in direct terms that it is unconstitutional. Gaddis vs. County of Richland, 92 Ill., 119. Counsel for plaintiff in error relies chiefly for the reversal of judgment in this case upon two propositions, viz: That at the time of the issue of the bonds in suit, and for many years prior thereto, our Supreme Court had uniformily held that the Legislature could not, by a curative act, legalize subscriptions which had been irregularly voted to Railroad Corporations, and that this construction entered into and formed a part of the contract between the County of Jasper and the holders of the bonds.

In reply to this position, we assert that there is neither uniformity or consistency in the decisions of the Supreme

Court of Illinois on questions affecting municipal bonds, and we, in particularly, deny that there is uniformity or consistency in its decisions on the question as to whether the Legislature has power to cure defects in the calling and holding of elections. A careful examination of the decisions of that Court, we think, will disclose the fact that for more than ten years last past, it has been gradually encroaching, not only upon well settled general principles of commercial law, as applied to this class of securities, but upon its own former adjudications. A striking illustration of the inconsistencies and divers pretexts upon which it has from time to time held this class of securities void, may be found in the searching review of its record, by this Court, in the case of Livingston County vs. Darlington, 11th Otto, 410. The main ground upon which the decision in Gaddis vs. County, *supra* rests, is that the curative act is peremptory in its terms, and divested the county authorities of all discretion, thereby imposing a debt upon the county directly, without its consent. The construction of the third section of the act of April 9th, 1869, above quoted, when considered separate and apart from sections two and four, is a violent one. That section simply requires the subscription to be made "*in the manner the same was voted*" In other words, if there were conditions imposed by the vote originally, these conditions were to be observed in subscribing under the curative act. But when the second and fourth sections, of that act, are considered in connection with the third, the very foundation upon which the case of Gaddis vs. County rests must give way. The second section provides that "nothing contained in this act shall be so eontrued as to affect the condition and manner in which elections were ordered, stock voted, &c,"

and the fourth section, having referred particularly to Jasper County, provides that the act should be so construed as not to "impair the conditions upon which the stock subscription of Jasper County was made to said road." And yet that Court say in discussing this law: "This gives no discretion to the Board, but requires the subscription, although contrary to the judgment and against the will of the members of the Board." It needs no argument to establish the proposition that the law was drawn with great care, and with the view of preserving all the rights and interests of the municipalities affected thereby. If discretionary power was conferred upon the corporate authorities by the law, under which the vote was taken, the same power is carefully preserved by the curative act, for by its *express terms* the subscriptions were to be made, only upon the terms and conditions upon which they were voted, and particularly so in relation to Jasper County.

The case of Gaddis vs. Jasper County is not only not sustained by the alleged facts upon which it is based, but is in direct conflict with former adjudications of the same court, as well as the rulings of this and almost all other respectable courts and authorities, as we shall proceed to show. We call attention to the case of Williams vs. Town of Roberts, 88 Ill., 21. The court construes a *curative act* in this case, and holds that whilst it is not within the power of the Legislature to cure a defect in a town election, it is perfectly competent for it to cure defects in county and other municipal elections mentioned.

The Court say: "County Boards, such as Boards of "Supervisors, County Commissioners, &c., and the mu- "nicipal authorities of incorporated cities. &c., may, when "empowered so to do by proper legislation, subscribe for

"the capital stock of railroad corporations, without first "submitting the question to the electors of the munici- "pality. They are elected as representatives of the elec- "tors, and theoretically, in appropriate cases, their acts "are the acts of those they represent. Hence, it has been "held, when a vote of the electors has been required as a "precedent condition to the making of a subscription for "stock in a railroad company, and the law prescribing the "mode of calling and holding the election has not been "observed, inasmuch as the Legislature might have em- "powered the municipal authorities to make the subscrip- "tion without first submitting the question to the electors, "it may, by a subsequent enactment, declare the non- "compliance with the law in the holding of the election "of no consequence, and validate the subscription—in "other words, validate the subscription without reference "to the election." This was the law of the State of Illinois at the time the bonds in suit were issued, and long after. If our rights are to be determined by the adjudications of the State Court, we insist on having them measured by the rule in force at the time we acquired them The same doctrine was announced in Frick vs. Keithsburg, 34 Ill., 421, where it was said that a vote of the municipality is not necessary "It is competent for the Legislature to be- "stow the power directly on the corporation without any "intermediary, as they did in this case." The Court failed in that case to make any distinction between a town or- ganized under the township organization law of Illinois, and other municipal corporations, such as counties, cities, &c. Again, the power of the Legislature, by curative act to authorize (not compel) a municipal corporation to issue bonds irregularly, and illegally voted, was fully recog-

nized in Railroad Company vs. City of Sparta, 77 Ill., 509. In this case the Court say: "Under this act the city may "have authority to issue the bonds and yet not be com- "pelled to do so." From this language and the foregoing quotations, we reach the conclusion that up to the date of the issue of the bonds in suit the Supreme Court of Illinois had not only never denied the power of the Legislature, by curative act, to authorize the issue of bonds irregularly voted, but expressly and emphatically asserted it as to all municipalities except *towns* organized under the township organization law of Illinois. We concede that from the time of the decision of Marshall vs. Selliaman, 61 ill., 223, up to the present the Court has denied this power in respect to the class of corporations last mentioned But as the county of Jasper is not of the class to which the power is denied, the line of "*unbroken authority*" upon which counsel relies has no application to the case at bar. In view of the foregoing, we pronounce the case of Gaddis vs. County *supra*—a new departure—and, in the language of this Court, it "stands out in solitary and unenviable notoriety," unsustained by either reason, justice or authority.

In support of our declaration and the principle contended for, we beg leave to call attention to the following authorities: Judge Cooley, in his new work on "Taxation." page 229, after an elaborate review of the doctrine of curative statutes, announces the following as the correct rule: "The general rule has often been declared, that the Legislature may validate retrospectively the proceedings which they might have authorized in advance. Therefore, if any directions of the statute fail of observance which are not so far of the essence of the thing to be

done that, they must be provided for in any statute on the subject, the Legislature may retrospectively cure the defect." The same author, in his work on "Constitutional Limitations," 371, asserts the same principle and supports his text by the citation of numerous authorities. Dillon, in his work on "Municipal Bonds," page 48, sanctions the right, and quotes many authorities in support thereof. But this Court covers the entire ground in Beloit vs. Morgan, 7th Wall, page 624, where, in speaking of the Constitutional power of the Legislature to validate bonds irregularly issued, it is said: "That is not an open question in this Court. Whenever it has been presented the ruling has been that, in cases of bonds issued by municipal corporations under a statute upon the subject, ratification by the Legislature is, in all respects, equivalent to original authority, and cures all defects of power, if such defects existed, and all irregularities in its execution. The same principle has been applied in the Courts of the States This Court has repeatedly recognized the validity of private and curative statutes, and given them full effect where the interests of private individuals were alone concerned, and were largely involved and affected. The earlier and more important of these authorities are so well known to the profession and are so often referred to that it would be a waste of time to comment upon them."

In conclusion of this branch of the case, we will only add that the principle so clearly and forcibly stated by this Court, in the case last mentioned, is in entire harmony with all modern text writers, and the adjudications of all the State Courts who have had occasion to discuss it; and, as we have already stated, it was never questioned, even by the Supreme Court of Illinois, when ap-

plied to *counties*, until the case of Gaddis vs. County, *supra*.

Counsel for plaintiff in error insists that this Court must follow the State Court in its construction of the Constitution and laws of the State, even where negotiable paper is the subject of litigation. This proposition we deny, and the importance of maintaining our denial can hardly be overestimated in view of the remarkable rulings of our Supreme Court on questions affecting this class of securities in latter years. This Court has, time and again, refused to follow the State Courts, or to recognize the doctrine contended for by counsel in this case, when the subject of litigation was "*commercial paper*."

In the case of Swift vs. Tyson, 16 Peters, p. 1, Justice Story, in construing the 34th section of the judiciary act says:

"It is, however, contended that the 34th section of the judiciary act of 1789. c. 20, furnishes a rule obligatory upon this Court to follow the decisions of the State tribunals in all cases to which they apply. That section provides 'that the laws of the several States, except where the constitution, treaties or statutes of the United States shall otherwise require or provide, shall be regarded as rules of decision in trials at common law in the Courts of the United States, in cases where they apply.' In order to maintain the argument it is essential, therefore, to hold that the word 'laws,' in this section, includes within the scope of its meaning the decisions of the local tribunals. In the ordinary use of language, it will hardly be contended that the decisions of Courts constitute law. They are, at most, only evidence of what the laws are, and are not of

themselves laws. They are often re-examined, reversed and qualified by the Courts themselves, whenever they are found to be either defective, or ill-founded, or otherwise incorrect. The laws of a State are more usually understood to mean the rules and enactments promulgated by the Legislative authority thereof, or long-established local customs having the force of laws. In all the various cases which have hitherto come before us for decision, this Court have uniformly supposed that the true interpretation of the 34th section limited its application to State laws strictly local; that is to say, to the positive statutes of the State, and the construction thereof adopted by the local tribunals, and to rights and titles to things having a permanent locality, such as the rights and titles to real estate, and other matters immovable and intraterritorial in their nature and character. It never has been supposed by us that the section did apply, or was designed to apply, to questions of a more general nature, not at all dependent upon local statutes or local usages of a fixed and permanent operation, as, for example, to the construction of ordinary contracts or other written instruments, and especially to questions of general commercial law, where the State tribunals are called upon to perform the like functions as ourselves; that is, to ascertain, upon general reasoning and legal analogies, what is the true exposition of the contract or instrument, or what is the just rule furnished by the principles of commercial law to govern the case. And we have not now the slightest difficulty in holding that this section, upon its true intendment and construction, is strictly limited to local statutes and local usages of the character before stated, and does not extend to contracts and other instruments of a commercial nature, the true interpretation and

effect whereof are to be sought, not in the decisions of the local tribunals, but in the general principles and doctrines of commercial jurisprudence. Undoubtedly the decisions of the local tribunals upon such subjects are entitled to. and will receive, the most deliberate attention and respect of this Court; but they cannot furnish positive rules, or conclusive authority, by which our own judgments are to be bound up and governed. The law respecting negotiable instruments may be truly declared, in the language of Cicero, adopted by Lord Mansfield in Luke vs. Lyde, 2 Burr, R. 882, 887, to be, in a great measure, not the law of a single country only, but of the commercial world."

And again, in the case of Pease vs. Peck, 18 Howard, 599, the Court say: "When the decisions of the State court are not consistent, we do not feel bound to follow the last, if it is contrary to our own convictions, and much more is this the case when, after a long course of consistent decisions, some new light suddenly springs up, or an excited public opinion has elicited new doctrines subversive of former safe precedent. Cases may exist also where a case is gotten up in a State court for the very purpose of *anticipating* our decision of a question known to be pending in this Court Nor do we feel bound in any case in which the point is first raised in the courts of the United States and has been decided in a Circuit Court to reverse that decision contrary to our own convictions in order to conform to a State decision made in the meantime. Such decisions have not the character of established precedent declarative of the settled law of a State. Parties who, by the constitution and laws of the United States have a right to have their controversies decided in their tribunals, have a right to *demand the unbiased* judgment of the Court. The theory

upon which jurisdiction is conferred on the courts of the United States, in controversies between citizens of different States, has its foundation in the supposition that possibly the State tribunal might not be *impartial* between their own citizens and foreigners."

In the case at bar, we do "demand the unbiased judgment of the Court," and submit whether or not the "State tribunal" has been entirely "impartial" between its own citizens and foreigners in its adjudications on these questions. Following the decisions of this Court to a later period, we find, in Talcott vs. Pine Grove, 19 Wall 666, the Court said:

"Questions relating to bonds issued in a negotiable form, under an act of a State Legislature, involving questions relating to commercial securities, and whether under the Constitution of the State, such securities are valid or void, belongs to the domain of general jurisprudence. This Court will accordingly not follow the decisions of the Courts of the State where the bonds are issued, as to their validity and Constitutionality under the laws and Constitution of the State, if the judges here disapprove of those decisions."

This case states the doctrine just as we contend for, and it is the only safe position for this Court to occupy in order to maintain its independence and consistency. In Gelpcke vs. City of Dubuque, 1 Wall., 206, the Court say:

"We are not unmindful of the importance of uniformity in the decisions of this Court and those of the highest local Courts, giving *construction* to the laws and Constitutions of their own States. It is the settled rule of this Court, in such cases, to follow the decisions of the State Courts. *But*, there have been heretofore in the judicial history of

this Court, as doubtless there will be hereafter, many exceptional cases. *We shall never immolate truth, justice and the law, because a State tribunal has erected the altar and decreed the sacrifice.*"

In Supervisors vs Schenck, 5 Wall, 784, the Court say: "Attention is rawn to the fact that in a recent case, not yet reported, the Supreme Court of the State (Illinois) have held that these bonds are void, even in the hands of an innocent holder, but inasmuch as the power to issue the bonds was fully conferred by law, the question of their validity in the hands of an innocent holder, without notice, is a question of *commercial law where the State adjudications, although entitled to great respect, do not furnish the rule of decision in this Court.*"

Thus it will be seen that this Court, from a very early period in its history, has asserted its independence on questions relating to "commercial securities," and has with almost entire uniformity refused to follow the decisions of the State Courts in the construction of their Constitutions and laws when such construction was at variance with the unbiased judgment of this Court. The only exception to the rule we are able at this moment to cite is the case of Elmwood vs. Marcy, 92 U. S., 296. The opinion in that case is by a divided Court, and neither the principle advanced or the reasoning of the majority seems to have been followed in subsequent cases. In the case of Roberts vs. Bolles, 101 U. S., 129, this Court was asked to follow the State Court in Williams vs. Town of Roberts *supra.*, and hold the bonds void In answer to this position this Court said: "*It does not follow* that we should accept that decision as conclusive of this case. That would depend upon our approval or disapproval of the decision

upon its merits." We therefore maintain that it is the settled rule of this Court, and no longer open to discussion, that upon all questions affecting the validity of commercial securities this Court will disregard the rulings of the State Courts in all cases where such adjudications are not in harmony with the unbiased judgment of this Court.

It has already been shown, as we think, that at the date of the issue of the old bonds the Supreme Court of Illinois recognized the power of the Legislature to pass the curative act. This being true, the law is well settled that no decision of that Court subsequently made could have the effect to invalidate them. In Gelpcke vs. Dubuque, 1 Wall., 206, the Court said: "The sound and true rule is that if the contract, when made, was valid by the laws of the State as then expounded by all departments of the government, and administered in its courts of justice, its validity and obligation cannot be *impaired* by any subsequent action of legislation or decision of its courts altering the construction of the law."

Our next inquiry is: Does the plaintiff in error occupy such a position as will enable it to raise the questions which we have endeavored to discusss? We think not. The recitals of the old bonds declare, among other things, that they are issued in payment of *stock* subscribed to the railway company, (Record 15); and the record of proceedings of the Board of Supervisors, offered in evidence by plaintiff in error, (Record 23), show that the stock was accepted by the county, and provision made for having it properly represented in the railroad company. For the purposes of this case we are justified in assuming that the county owns the stock to-day, and that it is worth par. Under similar facts this Court said, in Tallcott vs. Pine

Grove, *supra:* "It would be in the highest degree inequitable and unjust to permit the defendant to repudiate a contract, the fruits of which he retains." And, again, in Eaves vs. Coloma, 92 U. S., 484, the Court say: "Saying nothing at present of the dishonesty of such a defense, while the consideration for which the bonds were given is retained, we come at once to the question," &c. And in County vs. Post, 93 U. S., 513, the Court found that the county received and retained the stock; and, commenting upon this fact, say:

"That this constitutes a waiver, and an estoppel which, under ordinary circumstances, would prevent the obligor from raising the objection that the contract had not been performed in time, the authorities leave no doubt."

Again: And still more directly in point is the case of Commissioners vs. January, 94 U. S., 202, where it is said: "The taking and holding the certificate of stock, issuing and delivering the bonds and paying the interest for a time, cured the defect as to the order for an election, if any such existed.

And still later, and quite as directly in point, is the case of County vs. Vansgele, 96 U. S., 688, the Court, in discussing the doctrine of estoppel, say: "But this is not all. In payment of the county subscription and bonds, certificates of stock in the St. Louis and St. Joseph Railway Company were issued to the county and are still held by it. They have never been tendered for cancellation. Upon the clearest principle of justice, the tax payers of Ray county are concluded by the acts of their official agents and by their own failure, either intentionally or from neglect, to assert, by appropriate proceedings, their legal rights, (if any they ever had,) &c."

We insist in the light of the foregoing authorities, that the county cannot be heard in a court of justice to question its old bonds, so long as it holds on to the consideration for which they were give.

In conclusion of this branch of the case we insist that the old bonds, when tested by the rules of the commercial law, as expounded by this Court, were binding, subsisting obligations of Jasper county at the time they were funded. If we are correct in this assumption, the plaintiff's case falls to the ground,

The funded bonds and herein of the doctrine of estoppel. There must be an end to litigation. The attempt of Jasper county to go behind its funded bonds, and dispute the validity of the debt thus funded, if successful, will open up a new field of litigation. We insist that the ends of justice demand that this Court shall, at the threshold of this highly dishonest effort, announce that, when a debt is funded in strict conformity to the laws of the State, that the corporation shall not be heard to dispute it thereafter.

We maintain that the municipalities are more interested in having the law so declared than the bondholder. Up to this time there has been a settled conviction among the holders of this class of paper, that when a bond is funded all irregularities in the original issue are cured thereby. Hence, we find that holders of old bonds have almost uniformily been willing to surrender their bonds in exchange for funded bonds, bearing much lower rates of *interest*, thus enabling the municipalities to throw off much of the burthen of taxation. The only possible inducement to the exchange, as we have already stated, is the belief that the new bonds are free from legal objection. Should this Court hold that a municipality may go behind the *funding*

and show a want of power, by showing the invalidity of the old bonds, from that moment the exchange of old bonds for funded bonds, bearing low rates of interest, will cease.

Now, what are the facts which should estop the corporation from denying the validity of the bonds in suit. We answer, first, the original debt was contracted under a valid law, which conferred the power. It was authorized by a vote of a majority of the legal voters of the county, and its validity was never disputed, notwithstanding the alleged irregularities in calling the election and issuing the bonds. The county obtained precisely what it contracted for, viz: The construction of the road and the amount of stock agreed upon. The stock was accepted, and the county claimed, and so far as the record discloses, obtained its full representation in the directory of the road.

The funded bonds, in suit, were issued, so far as it appears from the record, for the purpose of reducing the rate of interest from 10 to 7 per cent. The movement was inaugurated by the corporate authorities, and was doubtless considered as promotive of the financial interests of the tax payers. The holders of the old bonds surrendered them, and took in lieu thereof bonds bearing a lower rate of interest. It is conceded that the funded bonds were issued in strict conformity to the funding law of Illinois. But counsel insist, that by the terms of that law none but "*legal, binding obligations*" could be thus funded. Who by the terms of this law is to determine the legality or illegality of the debt which is proposed to be funded, and when is this important question to be decided? The importance of deciding this question, at the proper time, by the proper parties, and once for all will be conceded. We insist that the duty of deciding this question is, by the terms of the

law, cast upon the corporation, and not upon the bondholder, and that when it issued its bonds under the corporate seal of the county, by the Chairman and Clerk of its Board of Supervisors, and they certifying on the face of the bonds that they were issued in pursuance of the terms of the funding law of Illinois, "all provisions of which act have been duly complied with." that this amounted to a judicial determination of the legality of the debt thus funded, and should forever estop the county from denying the truth of the facts thus found and certified. We are not without authority in support of this position. Attention is called to Eaves vs Coloma, 92 U. S., 488, where this Court discuss the question and hold in apt terms that the authorities of the corporation are charged with the duty of determining whether the bonds should be issued, and that when they decide the question in the affirmative their decision is final and conclusive. And this doctrine is reasserted, if possible, with more vigor and their decision, and Eaves vs. Coloma, approved in Commissioners vs. Bolles, 94 U. S., 104.

But counsel say, in answer to this position, that if we invest the corporate authorities with this important power, we thereby enable them to issue bonds in violation of the law and Constitution. Our answer is, that when the people of an entire county vote to issue bonds, and the Board of Supervisors of the county, in execution of the will of the people thus expressed, by proper resolution direct the issue, and the bonds are in fact issued, containing recitals such as the bonds in suit contain, and the bonds thus issued pass into the hands of innocent purchasers, we insist that the bonds should be paid, Constitutions and laws to the contrary notwithstanding. The Supreme Court of Illi-

nois, in Brown vs. People, 67 Ill., 435, say, in discussing the doctrine of estoppel:

"The doctrine of estoppel is, that when a person by his words or conduct voluntarily causes another to believe in the existence of a certain state of things, and induces him to act upon that belief, so as to change his previous position, he will be estopped to aver against the latter a different state of things."

And again, "Counties have no right to procure all the benefits of an act which they are authorized to perform, recognized and acted upon by them as legal, and then escape liability, any more than have private individuals. They must respond to their legal engagements to the same extent as individuals." Johnson vs. County of Stark, 24 Ill., 90.

But this Court has said, in discussing the doctrine, that "Parties must take the consequences of the position they assume. They are estopped to deny the reality of a state of things which they have made appear to exist, and upon which others have been led to rely. Sound ethics require that the apparent in its effects and consequences should be as if it were real, and the law properly so regards it. Casey vs. Galli, 94 U. S., 680, and cases there cited. We deem it a waste of time to multiply authorities on this point, and content ourselves by assuming that this Court is familiar with its long and uniform line of decisions in support of the doctrine of estoppel, for which we contend, commencing with the celebrated case of Knox County vs. Aspinwall, 21 Howard, 539, and extending to the present time.

But counsel for plaintiff in error insists that we are not *innocent* purchasers of the funded bonds. In answer to

this we say, first, that the law presumes that we are innocent purchasers, and this principle is too familiar to the Court to need the citation of authority in its support. Has plaintiff rebutted this presumption by evidence? We answer, No. The only evidence on this point will be found on pages 26, 27 and 28 of the record. It does appear from the evidence, that the witness had collected some coupons of the old issue and some of the new issue, but it does not appear that defendant was the owner of the coupons, or that he ever saw or owned one of the original bonds The fact that defendant sent some of the old coupons for collection does not establish the fact that he owned the bonds. These coupons are negotiable, and it may well be that defendant purchased them after their maturity, and after they were severed from the bonds. The letter of defendant to witness, (page 28, Record), in the absence of the one to which it is an answer, is entirely *meaningless*, and so it appeared to the learned Court who tried the case, for he said: "I don't know whether it proves anything or not." (Page 27.) In conclusion, your Honor's attention is directed to the opinion of the Circuit Court, (pages 17 and 18 of the Record), and particularly that portion which holds the county estopped from questioning the validity of the original indebtedness.

Respectfully submitted.

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